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ABSTRACT

In this report, the Select Committee on Indian Affairs, having considered Senate bill 1645 (S. 1645) to reauthorize certain Indian educational programs, presents an amended bill and recommends its passage by unanimous vote. In late 1986, the Bureau of Indian Affairs (BIA) proposed to turn over all BIA schools to the states, if affected tribes refused to contract for their operation. Indian reaction to this proposal was strongly negative. S. 1645 as introduced placed BIA schools under Congressional "protection" and froze certain education regulations in place. The Committee substitute bill simply prohibits transfer of BIA schools to non-tribal entities without tribal or Congressional consent, and it establishes regional panels to review BIA education regulations. The amended bill also (1) adds a small formula grant to tribal supplemental programs for early childhood education; (2) rewrites scattered authorizations to create a single document covering the entire Indian Education Act; (3) clarifies eligibility requirements for Indian students in public schools; (4) establishes Gifted and Talented Centers at two tribal colleges; (5) requires that Indian preference be used in employment at the Office of Indian Education, Department of Education; and (6) proposes a White House Conference on Indian education. The report includes background and legislative history of S. 1645, section by section analysis, a cost estimate from the Congressional Budget Office, letters of strong opposition from the BIA and partial opposition from the Department of Education, and the texts of all changes to existing laws made by S. 1645. (SV)

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100TH CONGRESS
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REPORT
100-233

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INDIAN EDUCATION AMENDMENTS

NOVEMBER 30, 1987.—Ordered to be printed

Mr. INOUYE, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 1645]

The Select Committee on Indian Affairs, to which was referred the bill (S. 1645) to reauthorize certain Indian educational programs, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill (as amended) do pass.

PURPOSE

Title I of S. 1645 is designed to improve the administration of Indian education programs operated by the Bureau of Indian Affairs by refining existing laws governing the operation of BIA education programs. Title II establishes a new optional grant funding mechanism for Indian communities to use in lieu of P.L. 93-638 contracts for the purpose of providing quality education to Indian students. Part III of the measure reauthorizes the Title IV program operated by the Department of Education through fiscal year 1993 and reenacts the entire law in order to bring its provisions under one statute for easier and clearer reference. Under title IV of the bill, certain technical amendments are made to the Tribally Controlled Community Colleges and Navajo Community College Acts. Title V authorizes a White House Conference on Indian Education to be held between September 1989 and September 1991.

BACKGROUND

The 1921 Snyder Act (25 USC 13) is the general authority for the expenditure of funds by the BIA for the benefit of Indians in areas such as education, health, and economic assistance. Until Congress

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passed the 1975 Indian Self-Determination and Education Assistance Act and the Indian Education Amendments of 1978, the BIA operated schools for Indian children throughout the nation without any specific Congressional guidelines.

In 1975, Congress implemented a new policy of tribal self-determination by enacting P.L. 93-638, the Self-Determination and Education Assistance Act (638). This act provides that the government shall, at the request of a tribe, contract with that tribe to operate programs previously operated by the Federal government. The objective is to undo the century old pattern of paternalism by allowing tribes to manage their own programs in health, education, law enforcement, social services and other areas.

Many tribes have opted to contract to run BIA schools. These schools are now referred to as "contract schools" and are represented nationally by the Association of Community/Tribal Schools (ACTS) and, on the Navajo Reservation, by the Association of Navajo Contract School Boards (ANCSBA). Of the 167 schools for Indian children currently funded by the federal government, 64 are operated by tribes or tribal organizations and the remaining 103 are operated directly by the BIA. Together, these schools educate 11 percent of the Indian student population in the United States.

Subsequent to enacting the Self-Determination Act, Congress addressed growing and unresolved concerns about schools directly operated by the BIA by enacting the Indian Education Amendments of 1978. This Act established the Indian School Equalization Program (ISEP) which pays per student costs on a formula basis to all BIA and contract schools. ISEP uses the bulk of the total BIA education dollars which accounts for about 25 percent of the total bureau budget.

The intent of ISEP was to establish a rational basis for the distribution of funds among BIA schools by setting up objective criteria. This has, by all accounts, been successful. The Act also required that academic and dormitory standards be established, and set up a separate personnel system for educators in BIA operated schools. (Note: Employees of contract schools are employees of the tribe or other contractor, not the federal government.) The Amendments also established line authority directly from the Assistant Secretary for Indian Affairs to the Director of the Office of Indian Education Programs to the schools.

The impetus for title I of S. 1645 and title 8 of H.R. 5 in the House came from initiatives proposed by the Assistant Secretary for Indian Affairs in late 1986 and early 1987. Among the initiatives was a proposal to turn over operation of all schools operated directly by the BIA to the states if the affected tribe or tribes refused to contract. Reaction to this proposal from Indian country was strongly negative.

While tribes have responded well to the 638 contracting mechanism, some have opted not to contract to operate certain BIA schools because of the run-down condition of the facilities, because of an inability to negotiate a fair indirect cost rate, because of inadequate program funding, or for any number of other reasons. However, most Indian people want the option of an alternative to the public school system and view the decision to turn school operations over to states with much trepidation. Further, the threat to

do so if tribes are unwilling to contract is coercive, since contracting is an option, not a requirement. There is no apparent statutory authority that would allow wholesale contracting by the BIA to states for the operation of schools. Adding insult to perceived injury, there was virtually no consultation with tribes prior to the announcement of the decision by the Assistant Secretary.

Title I of S. 1645 as introduced responded to tribal concerns by placing all BIA operated schools and dorms under Congressional "protection" so that they could not be closed, transferred, curtailed or otherwise changed except by Act of Congress or on request of the affected tribe(s). Additionally, the bill as introduced proposed to freeze certain education regulations in place and thus to give them the full impact of statutory law. The Committee substitute bill differs significantly from the original bill in that both of these provisions have been deleted and replaced by less onerous provisions. The substitute simply prohibits the transfer of BIA schools to non-tribal entities without the consent of the affected tribe(s) or the Congress and establishes regional panels to review BIA education regulations. The substitute, like the original version of S. 1645, establishes a comprehensive system for consultation with tribes, and also mandates a study of the problems inherent in hiring and retaining teachers in the BIA school system. The substitute also includes a comprehensive formula for determining the administrative cost rate that each contract school should receive. This responds in part to the current inequity in determining indirect cost rates and in part to the proposal of the Bureau to set a flat rate of 15 percent for all programs, regardless of need.

Following testimony received at the Committee's hearings on S. 1645 that much of the emphasis of the government's Indian education effort is on remedial programs that are expensive and not always successful, the Committee opted to include a small formula grant program to be funded through the Bureau for tribal supplemental programs for early childhood education. It is well established that early childhood and family development programs can result in reduced health, social and educational problems in young children.

The new grant program authorized under section 114 of the bill will provide for the establishment of tribal programs in prenatal care, nutrition education, health education and screening, educational testing and other educational services. The bill directs tribes to coordinate this new program with other Federal, tribal, and state funded programs, including WIC, Headstart and others, with the objective of augmenting the effectiveness of these existing programs. The new program is limited to tribes or groups of tribes with 500 or more members in order to insure that minimum grants will be large enough to establish meaningful programs. The $15 million authorization is very modest; therefore, the Committee intends to look at this program very closely after the first year or two of operation to determine whether additional authorization may be needed.

Title II of S. 1645, retained in the proposed Committee subtitle, provides a grant mechanism that is an alternative to contracting by tribes under the Indian Self-Determination Act mechanism. This direct grant program builds on the contracting process but re-

places it at the option of the tribe. The grant amount would include all ISEP funding, plus administrative costs and other Federal program dollars that a school receives through the BIA, such as Chapter I, handicapped education, etc. While there would be no difference in the amount of funds received under a contract or a grant, the advantage to the proposed grant system will be greater independence on the part of tribes in carrying out school operations and far fewer reporting requirements. The education programs must, of course, remain accredited or meet certain other standards required of contract schools.

Department of Education.—In 19[illegible] Congress enacted P.L. 92-318, the Indian Education Act (Title IV), administered by the Department of Education. Title III of S. 1645 reauthorizes this Act through fiscal year 1993. Basically, the program provides formula grant funding under Part A to public schools to meet the educational and cultural needs of Indian students at the elementary and secondary levels. Part B provides grants, on a competitive basis, for planning, pilot, and demonstration projects, as well as for resource and evaluation centers. Part C provides grants similar to Part B but in the area of educational services for Indian adults. Part D provides program administration funds and authorizes the National Advisory Council on Indian Education and the Office of Indian Education at the Department of Education.

At the request of the Department of Education, the Committee substitute bill inlcudes a rewrite of all of the Title IV statute. Currently, there is no document in which one can read the entire Indian Education Act from beginning to end. Authorizations for the programs are included as sections of other laws, including Impact Aid, the Elementary and Secondary Education Act of 1965, and the Adult Education Act. Reauthorization of Title IV in a single statute will eliminate confusion and provide for easier administration of the programs, as well as for easier Congressional access for future amendment and reauthorization purposes.

A major issue that has surfaced in recent years concerns eligibility for the Title IV part A formula grant program. S. 1645, as introduced, was silent on the matter but there is a provision in title 8 of H.R. 5 that permits parent committees to determine eligibility. This proposal has been poorly received among federally recognized tribes insofar as a student's eligibility is based on tribal membership. These tribes maintain that only the tribes should determine who is or is not a tribal member. The eligibility issue has not been well handled by the Department of Education for many years. The Title IV program was designed to serve children of Indian ancestry (parent or grandparent enrolled in a tribe), not just those Indian children who are enrolled in a federally- or state-recognized tribe. The Department of Education has attempted to tighten the criteria for determining eligibility, to the detriment of many Indian children in urban school systems. The Committee substitute bill maintains the current eligibility requirements and mandates the continued of the 506 forms that have been used since the program began, including use of the good faith effort. This is simply a notation on eligibility forms made by schools to show that a good faith effort has been made to obtain an enrollment number or other evidence of tribal affiliation but without success. The Department accepts

this notation along with a satement attesting the school's belief in the reliability of their information that the child in question is indeed eligible for Title IV programs.

In addition to the rewrite of the statute and the clarification of the eligibility issue, the bill reauthorizes the programs through 1993, and includes several other changes to the statute as it now exists, namely:

—A clarification that the term "member" means a member as defined by the applicable tribe, band or other organized group;

—The establishment of American Indian Gifted and Talented Centers at two tribal colleges (Sinte Gleska and Navajo) with total program funding levels authorized at $3 million per year through fiscal year 1993;

—A requirement that Indian preference be used in employment within the Office of Indian Education at the Department of Education;

—A requirement to include BIA operated schools as eligible for Title IV formula grants;

—A requirement that the Director of the Office of Indian Education, report directly to the Secretary of the Department of Education, and

—A requirement that notice of fellowships be given no less than 45 days prior to the beginning of the school term.

White House Conference.—At the Committee's second and final hearing on S. 1645, several witnesses were asked about the feasibility of establishing an independent national Board of Indian Education to assume responsibility for Federal policy relating to Indian education. The overwhelming consensus favored further exploration of this idea. The purpose of the White House Conference on Indian Education in title V of the bill is to focus national attention on Indian education policies and issues, and would provide the opportunity to further develop the idea of a national board as well as to develop other proposals and recommendations for improving educational program for Indian people. The Conference would be the most systematic study of Indian education needs that has ever been undertaken and would provide a constructive forum for bringing about changes in the present system of delivery of eduation services to Indians. The Conference is patterned after other White House Conferences and will include participants representing all phases of Indian education from both urban and rural areas.

Legislative History

S. 1645 was introduced on August 7, 1987, by Senator DeConcini for himself and Senators Inouye, Evans, and Daschle, Burdick, McCain, and Murkowski. Senators Melcher and Bingaman have joined as cosponsors. Senator Daschle chaired a hearing on the bill at Pine Ridge, South Dakota, on August 17, 1987 at which testimony was received from approximately 40 witnesses. The Committee held a second and final hearing on September 29, 1987, when testimony was received from the Department of Education, the Department of the Interior, several Southwest tribes and organizations, four national Indian education organizations and one U.S. Senator.

The House companion bill, H.R. 5, passed the House in May and is pending before the Senate Labor and Human Resources Committee. This bill is the Omnibus Elementary and Secondary Education Act of 1987 and title 8 of the measure contains Indian education amendments that are comparable to those contained in S. 1645. The Select Committee on Indian Affairs anticipates that S. 1645, as ordered reported, will be incorporated into the omnibus education bill, S. 373, that has been ordered reported by the Senate Labor and Human Resources Committee.

Committee Recommendation and Tabulation of Vote

The Select Committee on Indian Affairs, in open business session on October 14, 1987, by unanimous vote and with a quorum present, recommends that the Senate pass S. 1645.

Section-by-Section Analysis

TITLE I

Sec. 101. Title—Indian Education Amendments of 1987.

Sec. 102. Amends the 1978 Education Amendments to prohibit the transfer of any school or school program to any entity other than a tribe unless the affected tribe(s) or the Congress approves such transfer. If the Secretary intends to ask Congress for legislation to permit transfer of a Bureau school to the public schools, he must make proper notification to the affected tribe or tribes. This section also provides that the Secretary may not close a dormitory for failure to meet standards unless he has complied with the law that requires him to report to Congress on the costs for bringing all BIA funded dorms up to standard. This requirement has not been met although it has been in the law since 1978. This section replaces the original language of S. 1645 that made every BIA funded school an instrumentality of Congress and prohibited the Secretary from taking any action with respect to such schools without Congressional approval.

Sec. 103. Amends the 1978 law to provide that schools closed for emergency reasons must be reopened within a year or, if that is not possible, that the Secretary make a report to Congress giving the reasons for the extended closure.

Sec. 104. Provides guidelines for new regulations to govern the opening of new BIA or contract schools or expansions of existing programs and provides that no decision may be based primarily on the proximity of other schools. The section also recognizes the programs at programs at Pueblo of Zia and the Tama Settlement if the school boards vote to expand such programs.

Sec. 105. Provides for waiver of dormitory standards to prevent closure of schools that do not meet standards. The Congress required the establishment of the standards in part to determine the costs for bringing dormitories up to minimum standards. The intent was not that the promulgation of standards be used as a justification for closing dormitories. Rather, the Bureau should report to the Congress as to what is needed to make these facilities into decent living environments that are conducive to student learning and healthy development.

SEC. 106. Establishes area review panels made up of people working in the field of education for the purposes of drafting initial regulations and of reviewing changes to existing regulations promulgated by the Bureau on education matters. S. 1645 originally proposed to freeze all existing regulations to prevent onerous changes that the Bureau was proposing to be made without any consultation with Indian tribes, educators or the Congress. The Committee agrees with the Bureau that such a freeze would be too cumbersome for both the Administration and the Congress. The Committee believes that the establishment of area review panels will respond to tribal concerns about the need for effective consultation between the Bureau, the tribes and educators. This section should be read in conjunction with section 110 as a clear reflection of this Committee's ongoing concern that the Bureau of Indian Affairs, as the primary trustee for Indians, obtain the information and input needed to address Indian education issues directly from the people at the local level who are working with the programs that serve Indian students at all grade levels and in all types of education programs. The Committee intends that each Bureau area office have a panel in place that can be called upon on a regular basis to develop new regulations and to draft needed amendments to existing regulations. Persons would be selected from each Agency office under the jurisdiction of the Area office to insure a wide group of people with unique problems and perspectives of the regulatory process.

SEC. 107. Modifies the ISEP formula to include a weighted student unit (WSU) factor for those residential education programs that can serve some students for less than the full academic year. This will allow those students who live at home except during periods of bad weather to be served. The section also adjusts the weights given for 7th and 8th grade students and for small schools. Studies have shown that there is a higher cost affiliated with grades 7 and 8 than had been anticipated when the formula was established in 1980. There have been two efforts by the BIA to change the formula administratively but these were unsuccessfully. For small schools, the current formula does not work for schools with less than 50 students due to a mathematical quirk in the formula. Thus the Committee opts to statutorily write it out so that all schools start from a minimum base of 50.

This section is unchanged from section 106 of S. 1645 as introduced, except that the Committee also agreed to establish additional WSUs for handicapped students in pre-kindergarten programs and for students in gifted and talented programs.

Under P.L. 99-457, the Bureau is mandated to provide special education and related services to children with handicaps who are ages 3 through 5. The current absence of a WSU for these pre-kindergarten children deprives schools of basic funding for these services, inadvertently creating a disincentive to identify and appropriately serve these children. The WSU factor for children in pre-kindergarten handicapped programs will correct this inequity by making formula funding available for children with handicaps aged 3 through 5 comparable to Kindergarten through 12 funding.

While the Committee action redresses a funding imbalance, the Committee also expects the Bureau to issue regulations to guide

the identification, evaluation, placement, and provision of services to children with handicaps aged 3 through 5. Such standards are to be developed in consultation with the BIA Advisory Committee for Exception Children, and must meet the requirements of sections 106 and 110 of this Act. In order to effectively plan, develop, coordinate, and improve upon the quality of programs and services for children with handicaps aged 3 through 5, the Bureau is directed to employ qualified early childhood special education personnel within the Office of Indian Education Programs. Such positions are to be in addition to existing personnel ceilings.

The section also creates an additional WSU factor of .50 for part-time gifted and talented students and 1.0 for full-time gifted and talented students. In 1984, P.L. 98–511 authorized the Bureau to include a factor for "special programs for gifted and talented students" within the ISEP formula. The Bureau has not yet provided stable funding for these services and the Committee has therefore acted to provide funds for those services and activities that are not ordinarily provided by the school to address and develop the capabilities of Indian students who are gifted and/or talented.

It is the Committee's intent that the term gifted and talented refer to children and youth who show evidence of high performance or capability in areas such as intellectual, artistic, creative, or leadership capacity, or in specific academic fields, and that services or activities for these students include accelerated and enrichment programs that provide, but are not limited to, special student groupings, special classes, mentorships, independent study and summer programs. Such experiences, as appropriate, shall include opportunities to study and examine American Indian contributions to fields such as medicine, engineering, law, natural resources, and the arts; contemporary Indian affairs such as tribal government, tribal economic development, Indian law; and tribal culture and history. It is not the Committee's intent to limit the focus of these services or activities, but only to clarify that American Indian contemporary affairs, contributions, history, and culture are important areas of study for these students.

The Committee further directs the Bureau to issue regulations to guide the identification, multidimensional evaluation, placement, and provision of services to gifted and talented children. Since this is a new program emphasis within the Bureau, the Bureau is further directed to employ within the Office of Indian Education Programs, qualified personnel in the field of the education of gifted and talented children to plan, develop and coordinate these services as well as provide necessary training and technical assistance. Such positions are to be in addition to existing personnel ceilings.

SEC. 108. Establishes an Administrative Cost Formula for contract schools that is intended to bring equity into the current system for providing indirect costs to those schools. H.R. 5 contains a formula that, because of its complexity and its relationship to the ISEP formula (perhaps causing a negative effect on BIA-operated schools), was not included in S. 1645. At the Committee's hearing in September, educators and school board members from both BIA and contract schools presented a redrafted formula to meet the earlier concerns that had been expressed. The Committee has included that new formula in section 108.

Under the formula, administrative costs are expressed as a percentage of direct program costs and can be adjusted to meet the needs of those schools which may be small, mid-sized, or larger. This formula also provides flexibility for financial adjustments related to: (a) isolation and program complexity; and (b) phase-in periods to allow for program implementation and costs associated with such development.

The formula is based on an approach which allows for:

1. The lowest indirect cost rate (percent) which will meet the administrative cost needs of the largest contract schools, when applied to their direct program funding totals; and
2. A higher rate which will meet the same needs for the smallest stand-alone contract shools, when applied to their direct program funding totals; and
3. The size of the direct program of that hypothetical school whose reasonable incremental administrative cost needs are met when the median between the two rates (above) is applied to its direct program funding totals.

In mathematical notation (with assumed values) the formula reads:

$$\frac{((0.12 \times \text{direct cost base}) + \$300{,}000)}{(\text{direct cost base} + \$600{,}000)} \quad (= \quad \% \text{ rate})$$

As it is applied the product of the school's direct cost base is multiplied by the minimum base rate, added to the product of the standard cost base and is multiplied by the maximum base rate, in total; divided by the total of the school's direct cost base added to the standard direct cost base; and is to equal the school's un-adjusted administrative cost percentage rate.

The formula was drafted after intense study of existing funding needs of contract schools. It authorizes the Secretary to pay, subject to appropriations, administrative costs which enable tribes and tribal organizations that operate contract schools, to provide all related administrative overhead services and operations necessary to meet the requirements of law and prudent management practice without reducing direct program services to the beneficiaries of the programs operated. The funds available should allow schools to perform necessary support functions which would otherwise be provided to or by the Assistant Secretary or other Federal officials. In providing administrative and indirect costs under this provision, the Secretary may not reduce other program funds, including those determined under the formula. The section further directs the Secretary to undertake an empirical study of the formula to be submitted to the Congress by October 1, 1988.

SEC. 109. Sets up guidelines for local procurement by Bureau schools of amounts up to $25,000. In 1984, because of problems with the existing procurement system in dealing with emergency needs, Congress amended the 1978 Act to allow for procurement by local Bureau schools of items in amounts of up to $25,000 per year. In 1985, at the request of the Bureau, the new authority was amended

to be subject to guidelines to be promulgated by the Assistant Secretary for Indian Affairs. So far, the guidelines have not been issued, nor does there seem to be any intention to issue such guidelines. Therefore, section 109 establishes procurement guidelines which will be made immediately applicable to all Bureau funded schools.

SEC. 110. Establishes a system for the Bureau to consult with tribes and tribal organizations on a twice yearly basis on all policy matters relating to education. Meetings are to be held in each region with notice published in the Federal Register 30 days in advance, along with a description of the topics set for discussion.

SEC. 111. Amends a statutory provision that allows tribes to waive Indian employment preference requirements by permitting waivers in cases of initial hires as well as in actions involving current employees as authorized by the existing provision. The section also amends the definition of "education position" to include school support personnel (food service, transportation, etc. staff) so that those personnel will have their pay determined under the special pay provisions in the 1978 Act. Existing personnel are not included unless they elect to be included. This section will permit the establishment of wage rates based on rates for similar personnel in public schools rather than under the wage board rate systems which has resulted in high rates and situations where support staff are paid more than school principals and teachers.

SEC. 112. Requires new studies to be submitted to Congress by March 1, 1988, that will determine the comparability of personnel compensation under the 1978 Act to personnel compensation in public schools and in schools operated by the Defense Department for dependents.

SEC. 113. Amends the 1978 Act to permit the salary rates of education personnel to be based on rates for comparable employees in comparable public schools rather than solely on civil service pay rates as the law now provides.

SEC. 114. Amends the 1978 Act to require use of authorized post differentials in pay when requested by a school board and where there is a disparity in pay of at least 5% or where the disparity affects the recruitment or retention of employees. The additional cost is borne within the amount of funds provided the school through the formula required under the 1978 Act.

SEC. 115. Establishes a new formula grant program in the Bureau for tribes and tribal organizations to establish and maintain early childhood programs to children under six years of age. The programs will include prenatal care, nutrition education, health education and screening, educational testing, and other educational services. The formula grants will be allocated pro rata based on the number of children in the tribe and would only be made to tribes or groups of tribes with 500 or more members. The section provides that all programs be coordinated with other programs and services available to the tribe. The section authorizes $15 million a year beginning with fiscal year 1989.

SEC. 116. Amends the 1978 Act to define a "Bureau funded school", a "Bureau school" and a "contract school".

SEC. 117. Permits the Secretary some discretion in making funding allocations under ISEP in cases where Gramm-Rudman sequestrations rise above 5 percent.

SEC. 118. Directs the Secretary to make grants and technical assistance available to tribes for the operation of tribal education departments. It is the Committee's view that tribal departments of education will enable tribes to better plan and coordinate all education programs within the reservation.

Grants awarded under this section will be based on tribal applications. The Committee intends that the grants provide for the development of coordinated education programs on a recipient tribe's reservation, including all preschool, elementary, secondary, higher and vocational educational programs, whether funded by tribal, Federal, or other sources. Grants and technical assistance can provide for development of tribal education codes, including tribal educational polices and tribal standards applicable to curriculum, personnel, students, facilities and support programs. The Committee intends that the Secretary provide grants and technical assistance pursuant to this section to several tribes of varying populations and geographic diversity. A few select grants, given to tribes with large schools systems and to tribes with mid-size or small systems will afford the Committee and the Bureau the opportunity to learn the benefits of tribal administration of education programs, as well as associated programs. The Committee recommends that the Oglala Lakota Tribe at Pine Ridge Reservation in South Dakota be selected for a demonstration project. Testimony before the Committee revealed that Pine Ridge has already initiated a number of important steps to obtain such a project. These efforts have the support of education and tribal leaders on the reservation, as well as the Congressional delegation.

The Committee also recommends that the Secretary provide a grant and technical assistance to the Lummi Tribe of Washington state for the development of a tribal education department under this section. Currently, the Lummi Tribe receives funds from twelve separate federal and state grants and contracts. The Lummi Tribe has proposed to develop an education plan to consolidate all its education programs from perschool through adult. The plan developed by the Lummi Tribe appears to fulfill the Committee's intention to demonstrate that cohesive and well coordinated programs can be developed in small and multi-tribe situations as well as in larger Indian communities.

SEC. 119. Requires the Secretary to conduct a study of the methods used to allocate Johnson O'Malley funds and make recommendations to Congress for legislation to ensure the most effective and equitable distribution of JOM funds. JOM is designed to fund supplemental programs for Indian students in public schools and to fund programs for pre-kindergarten children to meet their special and unique needs. Funds are used for remedial tutoring, preschool programs, summer school, and cultural enrichment activities. The section was added by the Committee to examine the question of what is an equitable method of distributing JOM funds. In August, 1986, Indian tribes and Alaska Native Villages were asked to vote among several options proposed by the Bureau of distribution of

JOM funds. The formula that was eventually agreed to provides an equal per pupil distribution.

Unfortunately, the formula fails to account for differences in the costs of providing education in various states. For example, Alaska's average per pupil expenditure is $7,760 compared to the national average of $3,365. Other federal education programs, including Impact Aid and Chapter I are distributed to states based on a per pupil average expenditure.

TITLE II

SEC. 201. Names this title the Tribally Controlled Schools Act of 1987.

SEC. 202. Findings—patterned after the Indian Self-Determination Act of 1975.

SEC. 203. Policy—renews the federal government's ongoing trust relationship with tribes and its continuing commitment to self-determination in Indian education.

SEC. 204. Authorizes grants to tribally controlled schools to cover costs of school operations and support services. Only one grant may be made to any tribe to cover the costs of all education programs operated by such tribes and election to receive a grant rather than a contract or contracts is entirely voluntary.

SEC. 205. Sets forth the funding sources from which a tribally controlled schools grant will be made, which will include all BIA ISEP funding, as well as "pass-through" funds, i.e., those funds appropriated to another Federal department but allocated by the BIA to tribes or tribal organizations.

SEC. 206. Provides that a tribally controlled school is eligible for a grant if the school is either operated under a 638 contract on date of enactment of this act, is operated by the BIA and the tribe elects to operate it, or is a school not previously funded by the BIA but which meets the requirements of this section. Requires review of pending applications for new schools to be done under regulations in place at the time of submission unless a tribe chooses to use provisions of this section.

Provides that a tribe may apply for a grant to operate a school currently operated by the BIA. Requires the Secretary to act on such application within 120 days and to approve it unless he finds it would deleterious to the welfare of the Indians served by the school.

Provides that a tribe may apply for a grant to operate a school not currently funded by the BIA. Requires the Secretary to act on such application within 180 days. If the Secretary takes no formal action in that time, the application is automatically approved and a grant will be effective no later than 18 months after the date the Secretary receives the application.

Provides that once a school is eligible for a grant, the school retains grant eligibility unless it is revoked under the provisions of this section.

Provides procedures for applications for expansion, transfer or modification of programs and requires the Secretary to act on such application within 120 days or it is deemed approved.

Sets forth the requirements for the Secretary in declination of applications for grants, e.g., if disapproved, Secretary must state his objections, assist the tribe to overcome the objections, and provide a hearing.

SEC. 207. Requires Secretary to pay grants in two payments; waives rule that interest on unexpended funds be returned to the Treasury; and allows investment of funds in government securities. Exempts funds from adjustments due to other federal agency audits.

SEC. 208. Applies certain protections and provisions of the Self-Determination Act to this grant program.

SEC. 209. Requires the Director of the Office of Indian Education Programs (BIA) to handle all applications.

SEC. 210. Authorizes issuance of regulations concerning duties assigned by this Title but prevents Secretary from imposing additional requirements through regulations.

SEC. 211. Definitions. Tracks those in the Indian Self-Determination Act.

TITLE III

SEC. 301. Short title—"Indian Eduation Act of 1987".

Part A—Financial Assistance to Local Education Agencies for the Education of Indian Chiidren

DECLARATION OF POLICY

SEC. 311. Congress declares that U.S. policy provides for financial assistance to local educational agencies to develop and carry out culturally related and special educational school programs for Indian students.

GRANTS TO LOCAL EDUCATIONAL AGENCIES

SEC. 312. The Secretary is directed to implement a program to make grants to qualified local educational agencies (LEAs). Appropriations will be based on a formula that uses a ratio of the number of qualified Indian children and their average LEA expenditure to total LEA expenditures. An additional 10% of the amount appropriated may be appropriated to provide financial assistance to schools that do not meet the requirements for the LEA grants. An additional 10 percent of the amount appropriated may be used for demonstration projects.

USES OF FEDERAL FUNDS

SEC. 313. Grants may be used for: (1) planning and developing; (2) establishing and maintaining programs; (3) training counselors relevant to alcohol and substance abuse.

APPLICATIONS FOR GRANTS; CONDITIONS FOR APPROVAL

SEC. 314. Grant applications must: assure that programs will be administered by or under the supervision of the applicant; describe administering methods that will be used; describe the need for planning funds if they are requested; describe evaluation procedures for the proposal; set forth a method to assure that these fed-

eral funds may be used with other funds; describe accounting procedures; and provide an annual report and other reports as appropriate. Applications can only be approved if they show that they will utilize the best available resources, and will increase educational opportunities for Indian children. Applications must set forth intended hiring procedures and parent committee involvement. Each Indian child who will participate in the program must be certified as eligible but the Secretary is required to use the 506 form that is currently in use for determining a child's eligibility. The Committee added this provision to insure that the status quo with respect to questions of eligibility is maintained. The Department of Education must continue to accept applications which do not need to contain a tribal enrollment number but in which the school attests to its good faith effort to locate such number.

PAYMENTS

SEC. 315. Secretary must make payments from time-to-time to LEAs with approved applications based in estimated spending amounts. Payments may not be made where the State has taken into consideration amounts received under this title to determine LEA funding amounts. State funding of LEAs must remain at least at 90 percent of the previous fiscal year funding level or grant allocations will be proportionately reduced.

AUTHORIZATION OF APPROPRIATIONS; ADJUSTMENTS

SEC. 316. $70 million is appropriated for fiscal year year 1988. For FY 1989, 1990, 1991, 1992 and 1993, such sums as necessary may be appropriated.

Part B—Special Programs and Projects to Improve Educational Opportunities for Indian Children

IMPROVEMENT OF EDUCATIONAL OPPORTUNITIES FOR INDIAN CHILDREN

SEC. 321. The Secretary may make grants to improve educational opportunities for Indian children. Grants may be used to support planning, pilot and demonstration programs; the establishment and operation of programs designed specifically to assist Indian children; the development of exemplary educational programs; the establishment and operation of training programs; and the dissemination of information. The Secretary may make the grants to a variety of state and local education agencies and Indian tribes and organizations to support projects to improve educational opportunities for Indian children. These projects may also coordinate with other federally assisted programs. The Secretary is authorized to make grants to institutions of higher education and state and local educational agencies for programs to prepare and improve the qualifications of persons who serve Indian students. The Secretary is authorized to make grants to State and local educational agencies and to tribal and other Indian community organizations for developing and establishing educational services and programs. The Secretary is authorized to make grants to higher education institutions and State and local educational agencies, in combination with institutions of higher education for carrying out programs to pre-

pare and improve the qualifications of persons to serve Indian students, giving preference to the training of Indians. The Secretary is authorized to make grants to and enter into contracts with various agencies, tribes and tribal organizations, and private institution, to establish information centers to evaluate programs, provide technical assistance, and disseminate information, both on an individual and a national basis. Applications for these grants must meet criteria established by the Secretary according to certain guidelines. Under this section $35 million is authorized for each fiscal year through 1993.

SPECIAL EDUCATIONAL TRAINING PROGRAMS FOR THE TEACHERS OF INDIAN CHILDREN

SEC. 322. Authorizes the Secretary to make grants and enter into contracts with institutions of higher education, Indian tribes and organizations to prepare individuals for and provide in-service training for teaching and administering special education projects for Indian people. Authorizes $2 million for each fiscal year through October 1, 1993.

FELLOWSHIPS FOR INDIAN STUDENTS

SEC. 323. The Secretary is authorized to award fellowships to Indian students to pursue studies in graduate and professional programs. Notice of fellowship awards must be given no later than 45 days prior to the beginning of the academic term. Authorizes such sums as may be necessary.

GIFTED AND TALENTED

SEC. 324. The Secretary is directed to establish centers for gifted and talented Indian students at Sinte Gleska College and at the Navajo Community College. The Secretary shall award grants and enter into contracts with these colleges and the American Indian Higher Education Consortium for demonstration projects to address the needs of elementary and secondary gifted and talented students. $3 million is authorized to carry out the provisions of this section for each fiscal year beginning with 1988 and ending with 1993.

Part C—Special Programs Relating to Adult Education for Indians

IMPROVEMENT OF EDUCATIONAL OPPORTUNITIES FOR ADULT INDIANS

SEC. 330. The Secretary may award grants to a variety of agencies, institutions, organizations and Indian tribes to establish, support, operate, perform research, development and dissemination for programs to improve employment and educational opportunities for adult Indians. Such sums as are necessary are authorized to carry out the provisions of this section.

Part D—Program Administration

SEC. 341. An Office of Indian Education is established in the Department of Education that will have a director who will report directly to the Secretary. This office shall administer the provisions

of this title. The Secretary shall give preference to qualified Indians in employment in the Office of Indian Education.

NATIONAL ADVISORY COUNCIL ON INDIAN EDUCATION

SEC. 342. A National Advisory Council on Indian Education is established which shall have 15 members who are Indians and who shall represent diverse geographic areas. The Council will review applications, evaluate programs and projects, provide technical assistance, assist the Secretary in developing criteria and regulations and report to Congress each year. Such sums as may be necessary are authorized to carry out the provisions of this section.

Part E—Miscellaneous

DEFINITIONS

SEC. 351. Definitions are provided for: adult; adult education; free public education; Indian; local educational agency; parent; and Secretary. The definition of "Indian" is clarified to mean a member of an Indian tribe, band or other organized group of Indians as defined by the Indian tribe, band or other organized group. The term "local educational agency" includes any school operated by the Bureau of Indian Affairs, either individually or in cooperation with any other local educational agency.

CONFORMING AMENDMENTS

SEC. 352. A number of Acts and sections of law are repealed.

TITLE IV—MISCELLANEOUS

SEC. 401. Redefines what is to be included in calculating the amount of funds needed by NCC for operation and maintenance.

SEC. 402. Requires that grants to tribal colleges and to the Navajo Community College must be made through electronic transfers or check deposits rather than letters of credit, that funds may be invested in government securities, and that the income from such grants shall not be taken into consideration when determining eligibility for financial assistance.

SEC. 403. Defines college funds as eligible for use as a college's share under a federal grant.

SEC. 404. Requires that persons receiving BIA general assistance not be cut off from such assistance because of enrollment in an institution of higher education or another approved program of instruction. The current policy of the Bureau is to terminate general assistance on the theory that if a person is enrolled in school they are not available for employment.

SEC. 405. Permits use of Bureau facilities by students, tribes, or other groups and allows the Secretary to charge for any extra costs incurred by use of such facilities.

TITLE V—WHITE HOUSE CONFERENCE

SEC. 501. Findings.

SEC. 502. Calls for the Conference to be held at a time between September 1, 1989 and September 30, 1991. The purpose of the con-

ference is to study the feasibility of establishing an independent national Board of Indian Education and to develop recommendations to improve Indian education programs.

SEC. 503. Members of the conference will include representatives of the BIA; Indian educational institutions, including public schools and organizations that deal with the education of Indians; educators from reservations and urban areas with heavy Indian concentrations; and individuals with special competence in dealing with Indians and Indian problems. The President, the Speaker of the House, and the President pro tempore of the Senate each select one-third of the members.

SEC. 504. Establishes an interagency Task Force that will consist of professional and support staff members from both the Department of the Interior and the Department of Education. The Task Force will carry out administrative details. The Secretary of the Interior will provide office space, mailing costs, etc. Federal agencies should cooperate with the Task Force to provide necessary background material, assistance, etc.

SEC. 505. Requires that a final report containing findings and recommendations be made to the President and Congress and be published and distributed.

SEC. 506. Establishes an Advisory Committee composed of individuals appointed by the Speaker, the President pro tempore, the President, DOI, DOE and the Director of the Task Force shall assist the Task Force in planning and conducting the Conference and shall appoint the chairman of the Conference.

SEC. 507. Provides that the Task Force may accept gifts, grants, etc. Materials and equipment acquired shall be transferred to the BIA.

SEC. 508. Authorizes such sums as may be necessary to be appropriated for Fiscal years 1988, 1989, and 1990.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate of S. 1645, as amended, as evaluated by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 29, 1987.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 1645, the Indian Education

S.Rept. 100-233 0 - 87 - 2

Amendments Act of 1987, as ordered reported on October 14, 1987 by the Select Committee on Indian Affairs.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

JAMES BLUM,
(for Edward M. Gramlich, Acting Director).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1645.
2. Bill title: The Indian Education Amendments Act of 1987.
3. Bill status: As ordered reported by the Senate Select Committee on Indian Affairs on October 14, 1987.
4. Bill purpose: To reauthorize certain Indian educational programs, and for other purposes.
5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1988	1989	1990	1991	1992	1993
TITLE I						
Estimated authorization level:						
Early Childhood Development Programs	0	15	15	15	15	15
Increased administrative costs; new formula	4	5	5	5	5	6
Subtotal estimated authorization level	4	20	20	20	20	21
Subtotal estimated outlays	4	17	20	20	20	21
TITLE II [1]						
TITLE III						
Estimated authorization level:						
Aid to local education agencies	23	24	78	82	87	92
Improvement of educational opportunities			35	35	35	35
Special education teacher training			2	2	2	2
Fellowships	([2])	([2])	2	2	2	2
American Indian Gifted and Talented Centers	3	3	3	3	3	3
Adult Indian education			3	3	3	3
National Advisory Council			([2])	([2])	([2])	([2])
Subtotal estimated authorization level	26	27	123	127	132	137
Subtotal estimated outlays	11	23	89	117	127	132
TITLE IV						
Increased general assistance:						
Estimated authorization level	2	2	2	2	2	2
Estimated outlays	2	2	2	2	2	2
TITLE V						
White House Conference:						
Estimated authorization level	0	0	4	0	0	0
Estimated outlays	0	0	4	0	0	0
Bill total:						
Estimated authorization level	32	49	149	149	154	160
Estimated outlays	17	42	115	139	149	155

[1] Title II has no cost to the federal government.
[2] Less than $500,000.

Costs of this bill fall within function 500.

Basis of Estimate.—The cost estimate for S. 1645 reflects both the new and extended authorization levels for most federal Indian educational programs. For those programs where specific authorizations have been stated in the bill, the estimate reflects the stated levels. For those programs authorized at such sums as may be necessary, the CBO has estimated the authorization levels. It is assumed that the authorization levels are fully funded. Estimated total outlays for existing programs reflect current spending patterns. For new programs, estimated total outlays reflect the spending patterns of similar programs. The specific assumptions are stated below.

Title I.—Title I, the Indian Education Amendments of 1987, would require changes in regulatory practices governing the Bureau of Indian Affairs (BIA) and would modify the formula used in providing administrative cost grants to the tribe or tribal organization operating a contract school. It is estimated that the new formula would result in additional costs of $4 million in fiscal year 1988, $5 million per year in 1989 to 1992, and $6 million in 1993.

Title I would also establish a new Early Childhood Development Program to be run by tribes and tribal organizations. An authorization of $15 million is provided for fiscal year 1989 and each succeeding fiscal year for this new program.

Title III.—Title III would extend the authorizations of the following programs: grants to local education agencies, improvement of educational opportunities for Indian students, special educational training programs for the teachers of Indian children, fellowships for Indian students, the adult Indian education program, and the National Advisory Council on Indian Education. Under current law, these programs are authorized through 1989. S. 1645 would set new authorization levels or would extend the current levels for these programs through 1993. Title III would also establish American Indian Gifted and Talented Centers at Sinte Gleska College and Navajo Community College.

The 1988 and 1989 authorization levels for those programs shown in the table reflect the differences between current and new authorizations. In those cases where the current authorization is such sums, that level is assumed to be the amount appropriated for 1987 adjusted for projected inflation in 1988. With the exception of special education training programs for the teachers of Indian children and the Gifted and Talented Centers, which would be authorized at specified amounts for all years, the programs would be authorized at such sums through 1993. These outyear authorization levels reflect the latest stated levels adjusted for projected inflation.

Title IV.—Title IV would make miscellaneous changes to the Navajo Community College Act, including defining what is to be included when calculating Navajo Community College operating fund needs.

Title IV would also mandate that people receiving BIA general assistance not have their aid cut off because they enrolled in a tribal college. Currently, students are cut off because they are not available for work. The CBO has no way of accurately estimating the number of students who would now qualify for general assistance, nor the number who might now decide to go to college be-

cause they could continue to receive their payments. However, there are approximately 4,000 students currently enrolled in tribally-controlled community colleges (including the Navajo Community College). If 1,000 of these students are otherwise eligible for general assistance, this new language could result in additional annual costs of approximately $2 million. Costs could vary depending on the number of students who would otherwise qualify for BIA general assistance payments. Because these new beneficiaries would be in school for most of the year, it is likely that they would now qualify for general assistance nearly 12 months per year, compared to the 3 month average for current recipients. In fiscal year 1987, the average general assistance payment was approximately $215 per month.

Title V.—Title V would establish a White House Conference on Indian Education. The conference would be held sometime between September 1, 1989 and September 30, 1991. The conference is to be planned by the Interagency Task Force on the White House Conference on Indian Education, which would have an appointed staff of no less than four professional members and two support members. Among its various duties, the Task Force is to make technical and financial assistance available to states and intertribal organizations for conducting conferences in preparation for the White House Conference. A final report is to be submitted to the President within 120 days following the close of the conference. An Advisory Committee would also be established to assist the Task Force in planning and conducting the conference. Based on the costs of the White House Conference on Small Business, it is estimated that a conference of that magnitude (approximately 3,000 participants) would cost between $4 million and $5 million. Because the organizers of the conference would have discretion over its size, costs could differ from this estimate.

6. Estimated cost to State and local government: Enactment of this bill would have no budgetary impact on state and local governments.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Michael Pogue.

10. Estimate approved by: G.D. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

Regulatory Impact Statement

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 1645, as amended, will have a minimal impact on regulatory or paperwork requirements.

Executive Communications

The Committee received the following letters from the U.S. Department of the Interior and from the U.S. Department of Education giving the Administration's views on S. 1645:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, November 3, 1987.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This provides our views on S. 1645, the Indian Education Amendments of 1987, as amended and ordered reported by the Select Committee on Indian Affairs.

Enclosed with this letter is a detailed set of comments on the amended bill. It is apparent from those comments that although there are some significant improvements in the amended bill over the bill as introduced, some serious problems remain and some new problems have been added including in section 108 the establishment of a formula for administrative cost grants, a new section 115 establishing an early childhood development program, and a new title V providing for a White House Conference on Indian Education. Because of these concerns, we strongly oppose enactment of S. 1645 even as amended by the Committee.

The Office of Management and Budget has advised that there is no objection to the submission of this report to the Committee and that enactment of S. 1645 as amended by the Select Committee on Indian Affairs would not be in accord with the program of the President.

Sincerely,

ROSS O. SWIMMER,
Assistant Secretary—Indian Affairs.

Enclosure.

COMMENTS ON S. 1645, A BILL "TO REAUTHORIZE CERTAIN EDUCATIONAL PROGRAMS, AND FOR OTHER PURPOSES" AS ORDERED REPORTED BY THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

The revised bill has five titles:

Title I—Indian Education Amendments of 1987
Title II—Indian Schools Operations Agreements Act of 1987
Title III—Indian Education Act of 1987
Title IV—Miscellaneous Provisions
Title V—White House Conference On Indian Education

TITLE I—INDIAN EDUCATION AMENDMENTS OF 1987

Transfer of school operations

Section 102 of S. 1645 as ordered reported is a considerable improvement over the original version in S. 1645 as introduced and the comparable provision in title VIII of H.R. 5 as passed by the House. It permits the transfer (by contract or other means) of the operation or facilities of a Bureau funded school or school program only (1) if the transfer is approved by the tribe(s) representing 90 percent of the students, or (2) by considering the transfer as a closure for the purposes of the existing school closure procedure codified in 25 U.S.C. 2001(g). It also permits the closure of a Bureau funded boarding school failing to meet the dormitory criteria (standards) established under 25 U.S.C. 1122 if the Secretary has

submitted the annual plan for boarding schools required by 25 U.S.C. 1122(c). In addition, the above mentioned school closure procedure would apply to a boarding school closure.

Temporary school closure

Section 103 is a significant improvement over the provision as introduced. The revised version adds a requirement to the law for a report to Congress if the Secretary estimates a duration of more than a year in a temporary closure, consolidation, or substantial curtailment of a Bureau school or school program. Such temporary actions are authorized by a provision in 25 U.S.C. 2001(g)(1) without compliance with the procedures otherwise required in 25 U.S.C. 2001(g) "if required by plant conditions which constitute as immediate hazard to health and safety."

Funding additional or expanded schools

Section 104 provides requirements for regulations governing eligibility for initial funding of a school or expanded school program.

We strongly object to the following provision included in section 104: "A determination to deny eligibility under the regulations may not be based primarily on the proximity of other educational facilities." This is an improvement over the previous language but still could require Bureau funding to initiate a school adjacent to or near one or more other Bureau funded or public schools. This would be a waste of funds and cause the unnecessary diversion of funds from other Bureau funded schools. It could also cause the adjacent or nearby schools to become underutilized or otherwise adversely impact their programs. If such a provision is to be included it should be qualified by adding "in instances where the other education facilities are, or the program provided in the education facilities is, inadequate and the proposed school or expansion is necessary because the inadequacy will not be corrected in either a reasonable time, or a satisfactory manner."

Section 104 also includes authority for the BIA funded schools at the Pueblo of Zia (New Mexico) and the Tama Settlement (Iowa) to be expanded to kindergarten through grade 8 at the request of their local school boards. These types of decisions are best left to the executive branch.

Waiving dormitory standards

Section 105 amends the dormitory criteria provision in 25 U.S.C. 2002 to permit a tribe or a tribally authorized school board to waive the dormitory criteria (standards) and no provision is included to assure the establishment of a new minimum criteria for the dormitory involved. We believe that such a waiver is an unwise provision that is not in the best interest of the students for whose benefit the criteria were established as required by law. We recommend that section 105 be deleted. We strongly object to authorizing a waiver that requires the Federal Government to have students attending school and living in facilities without any standards for such living conditions.

Restricting issuance of regulations

Although section 106 is a significant improvement over the provision it replaces, it needs further improvement. Instead of freezing regulations or enacting them into law as in the earlier versions of the provision, this revised version provides for an extensive consultation procedure before proposed regulations (including amendments) are published for comment and then requires a 90 day comment period when proposed regulations are published in the Federal Register. This procedure is in addition to the consultation procedure that would be required in section 110 discussed later in these comments.

The section 106 requirements would apply no matter how minor an amendment might be. They would apply even if the amendment were to implement a new statutory requirement. The 90 day comment period would apply even if the consensus of the review panels was in favor of the new or amended regulation. Such an extensive procedure would only assure that the already lengthy procedure for promulgating regulations will taken even longer. It will also require additional funds to be spent for other than school operations.

We recommend that seciton 106 be deleted.

Modifying school funding formula

Section 107 directs the Secretary to modify the formula for the distribution of amounts appropriated for Bureau funded schools. Such changes are more appropriately dealt with by administrative action.

One of the modifications was not in the bill as introduced and is to "provide additional funding to schools that are required by law to meet State standards which are in addition to minimum standards required for accreditation." The provision in 25 U.S.C. 2001(c) calls for standards "so that the programs of each school shall be in compliance with the minimum standards required for accreditation of schools in the State where the school is located." It follows that the formula should be modified to take into account the fact that some Bureau funded schools (such as those in Maine) are required by law to incur expenses not required of other Bureau funded schools. However, if the formula modifications are retained in the bill, to avoid payment of an excessive amount and to be fair to the Bureau funded schools from which the additional funds will be diverted, we recommend the following be added at the end of the provision: "*Provided,* That the additional funding may not result in a total provided under the formula that exceeds the average per student expenditure for comparable public schools in comparable areas serving comparable students in the state." The Federal Government should not be required to pay more than the state and local government do to meet the same requirements.

Administrative cost grants

Section 108 as revised is significantly worse than the version we supported in S. 1645 as introduced and is not sufficiently better than the version in H.R. 5 as passed by the House to alter our strong objections to it.

It has not been established that the formula is workable or equitable or that the amounts provided are the appropriate amounts. To enact the formula into law under those circumstances would risk program dislocation and waste Indian education resources on a large scale. As we have stated before, we do not feel that the problems of determining and financing appropriate funding for contract schools indirect costs can or should be separated from the larger issue of indirect cost funding for all tribal organization contractors under the Indian Self-Determination Act. We believe the issue should be addressed in the larger context rather than as part of this legislation.

Section 108 provides that if a tribe has a contract school and other Bureau programs under contract, this formula for contract schools could be applied to all the contracted programs but it could not be applied if the programs a tribe contracts to operate does not include a school. The formula could also be used (unless the tribe elects otherwise) to establish the rate for contracts with agencies other than the BIA if the tribe has a school under contract. There is no sound reason to establish an administrative or indirect cost system for contract schools that is separate from that for other Bureau contracted program activities. Further, a separate system could result in differing percentages of tribal contractors' needs being met solely because of the nature of the programs they contract.

Section 108 would have the Bureau pay the Administrative Cost for other Federal Agencies' funds that pass through the Bureau to contract schools and for the Bureau to seek reimbursement from the other Agencies. Since no other source of funding is indicated, it is not clear what funds are to be reduced if reimbursement is not provided by the other Agencies.

Section 108 would seem to authorize a mixing of Bureau and Department of Education funds with no separate accounting despite the prohibitions against such mixing of flow through funds received from the Department of Education. In addition, the provision would seem to make the flow through funds no-year funds available to the contract schools. However, the annual appropriations acts and other legislation governing the Department of Education programs involved may not be consistent with that provision. We suggest that the Committee consult with the Department of Education so that the various requirements will be consistent.

Even if section 108 becomes law before the President's budget for FY 1989 is submitted to Congress in January 1988, it would not be possible for us to comply with the requirement for a submission to Congress in January 1988 of "a projection of the overall costs associated with the formula set forth in subsection (c) for all tribal elementary or secondary educational programs which the Secretary expects to be funded in the fiscal year for which the appropriations are sought."

Section 108 legislates a formula and requires a study utilizing "a nationally reputable public accounting and business consulting firm" to determine the proper factors for use in the formula. We believe that such a study is an excellent idea but it should precede the establishment of a formula. In addition, the study should apply to all Bureau funded contracts with tribal organizations under the

Indian Self-Determination Act and should lead to a method of (1) establishing the appropriate amount to be provided by the Bureau to the tribal organizations for those administrative, insurance, and other costs not included in the funding base of the programs contracted and (2) determining the appropriate amount to be provided by the Bureau to the tribal organizations for the cost of shared services, facilities, supplies, or equipment utilized in connection with the contracts.

Local procurement

Section 109 continues to amend the provision in 25 U.S.C. 2009(a)(4) to delete the authority for the issuance of guidelines by the Assistant Secretary for Indian Affairs for the use of the liberalized procurement authority authorized in that provision and adds certain requrements for the use of that authority.

We do not object to the addition of the specified requirements for the use of the procurement authority but we do object to the removal of the authority for the Assistant Secretary to issue guidelines.

Coordinated programs

We note with approval the omission from the revised bill of the provision which would have required the BIA to implement any relevant provisions of a cooperative agreement between a BIA funded contract school and a local public school. The BIA would not be a party to the agreement nor have a role in its development or approval.

Consultation

Section 110 would require the Secretary, or a delegate, to conduct "regional meetings" with tribes and tribal organizations on a semi-annual basis and these meetings must be in addition to any other consultation meetings. This revised version is an improvement over the earlier version which would not have allowed the Secretary to proceed with any internal management procedures without consulting with tribes. We would not object to the revised version if it is clarified to require a meeting every six months in differing locations (such as Phoenix, Denber, Albuquerque, Billings, Portland, Green Bay, etc.) accessible to Indian communities. If more numerous meetings are to be required it would only be feasible to have them conducted by Bureau field staff because it is not feasible to have key Washington office staff spread even thinner by an extensive consultation travel schedule. Given the difficulty we have in recruiting quality staff for our Washington office we do not believe that it is feasible or desirable to try adding staff so that numerous meetings can be attended. We believe that a single general meeting every six months is more desirable and could involve the staff that is most knowledgable on the subjects of interest to the tribal organization representatives attending.

We object to the requirement in this section that the Secretary when considering proposals to Congress for school construction, expansion, closure, consolidation, or transfer incorporate into his or her plans the "desires" of the tribal and Indian entities consulted "to the greatest extent feasible". This could be construed as a limi-

tation on the Secretary's discretion to carry out his or her responsibilities to balance constituent desires against resource availability and competing needs.

Indian employment preference

Section 111 is unchanged. It would amend the provision in 25 U.S.C. 2011(f) to extend the authorized waiver by a tribal organization of the Indian employment preference laws to the initial hiring of an individual.

We do not object to this provision but we believe this flexibility should exist for the BIA as well. Like the tribes, we support the concept of Indian preference but we believe that in those instances where competent qualified Indians are not available we should be able to employ competent non-Indians.

Section 111 also amends 25 U.S.C. 2011(n)(1)(A) by adding to the definition of "education position" those BIA positions the duties and responsibilities of which are performed on a school-year basis principally in a Bureau school and involve "support services at, or associated with, the site of the school" but in the case of individuals employed in such positions on the date of enactment of the amendment the provision will apply if the individual so elects. The amendment has the effect of replacing wage board wage rates and personnel provisions for the support personnel involved with the rates and personnel provisions determined by the Secretary under 25 U.S.C. 2011 for BIA "educators" and "education positions". This amendment is inappropriate and should be deleted.

Personnel compensation

Section 112 calls for an extensive study relating to personnel compensation to be completed by March 1, 1988. In addition, it requires the cost of the study to be borne by other than the Office of Indian Education Programs and that certain described staff be involved in the study. The deadline is unrealistic and the other provisions are inappropriate.

Section 113 amends 25 U.S.C. 2011(h) to provide for compensation or salary rates for education personnel based on comparisons with public school rates. We object to the amendment because it anticipates the results of the required study in section 112. It might also require Federal employees performing the same function in different locations to be paid at different rates, which raises equity issues and could create perverse incentives for relocation and may be administratively unfeasible.

Post differentials

Section 114 would require the Secretary to grant the local Bureau school supervisor the post-differential pay authority in 25 U.S.C. 2011(3) if requested by the local school board and certain disparities in pay exist. We do not object to the delegation of authority.

Early Childhood Development Program

Section 115 would authorize an Early Childhood Development Program administerd by the BIA. We note significant problems with the provision and oppose its enactment.

The program in section 115 duplicates or overlaps the Head Start Program, the WIC Program, and activities of the Indian Health Service. It would almost certainly be more efficient to deal with the problems at which the provision is apparently aimed through those programs rather than creating a duplicative new program to supplement those programs. In addition, section 115 would provide funding through the BIA even where there are no Bureau funded schools and the state has an early childhood program. Finally, the formula seems to generate such a small amount of funds (about $200 per child at full funding) that only tribes with a total population of over 1,800 would receive enought money for any kind of a program.

Definitions

Section 116 contains definitions which we support.

Sequestration orders

Section 117 is a new provision apparently aimed at giving us some flexibility in how to deal with sequestrations of more than 5 percent of the amount appropriated for Bureau funded schools. We do not object to the provision.

Tribal Departments of Education

Section 118 is a new provision authorizing "grants and technical assistance to tribes for the development and operation of tribal departments of education for the purpose of planning and coordinating all educational programs of the tribe" and authorizing the appropriation each year of such sums as may be necessary to carry out the section. Although we support greater tribal government involvement in coordinating and supervising education (and other) programs operated for their members' benefit, we have not had an opportunity on such short notice to develop a position on this section.

Johnson-O'Malley funding allocation study

Section 119 is a new provision requiring the Secretary to conduct a study of the methods used in funding contracts under the Johnson O'Malley act provisions in 25 U.S.C. 452 et seq. relating to aid for Indian students in public schools. The results of the study are to be reported to the Congress within six months of enactment "together with recommendations for legislation that would ensure the most effective and equitable distribution of funds" under that Act. We do not object to this section.

TITLE II—INDIAN SCHOOLS OPERATIONS AGREEMENTS ACT OF 1987

We continue to oppose this title because as drafted it is unworkable and an invitation to abuse. It limits the BIA to accepting applications and reports from tribes and providing money to them, yet requires the Secretary to be accountable for the results. We also note that there is no specific mention that this grant system is an alternative to the current contracting system and that funds available under this system are in lieu of funds available under another system.

The intent of title II is apparently to achieve less BIA interference in the operation of what are now called "contract schools". We agree with this goal and in fact, we would like to see a change for all BIA contracted programs. Congress should consider a major overhaul of the P.L. 93-638 contracting system and not just limit a new proposal to the education program.

Under this new grant provisions a school would apply for an initial grant and be required to meet certain standards and eligibility criteria. Once a grant is provided, a school would be required to submit annual reports but would not reapply annually. The grant would be extended automatically subject to availability of appropriations and satisfactory performance as defined in the bill. We agree with this concept but not these provisions.

Continued eligibility for the grants is established by:

1. (a) Accreditation (or candidacy status) by an accrediting agency as determined by the Secretary of Education,

(b) a Secretarial determination that there is a reasonable expectation that accreditation or candidacy will be achieved within 3 years and that the program is beneficial to Indian students,

(c) accreditation by a tribal division of education if that accreditation is accepted by a generally recognized regional or State accrediting agency.

(d) compliance with the BIA standards as determined by an outside evaluator, or

(e) receipt of a positive evaluation once every three years for performance compliance under a P.L. 93-638 contract prior to the enactment of this act (the evaluator to be agreed upon by the school and the BIA, but if in the absence of an agreement, the tribal governing body decides on an evaluator or does the evaluation); and

2. The submission of four reports that include:

(a) an annual financial statement reporting revenue and expenditures as defined by the grantees cost accounting system;

(b) a biannual financial audit in accordance with the Single Audit Act;

(c) an annual submission to the Secretary of the number of students served and a brief description of the program offered under the grant; and

(d) a program evaluation (based on the appropriate standards) to be done by an impartial entity.

We agree with most of the criteria for determining satisfactory performance but we must insist that a school either be accredited by an accrediting agency or meet BIA standards. If outside evaluators are used (including under le above) we must be assured they are qualified to do an evaluation and would have no conflict of interest in the results of the evaluation. Therefore, we would recommend that a list of acceptable evaluators be developed between the BIA and tribal contractors that could provide this service. As an alternative perhaps evaluation teams should be developed to include an outside evaluator (professional eductor), an appropriate BIA employee and a person from another school system.

We would also point out that the Secretary of Education does not now approve accrediting agencies for elementary and secondary

schools, and do not believe this is an appropriate role for that Department.

We believe that the program evaluation should also include test scores for each grade and that the reports first be submitted to the tribal governing body for review and certification before being submitted to the BIA.

The amount provided to a school under the grant would include their calculated amount under the Indian Student Equalization Formula, the operation and maintenance amount, funds provided under other laws (Chapter I, etc.) and administrative costs as determined by the formula under the Act.

We have no objection to consolidating all appropriate amounts into one grant but we have major objections to the provision regarding administrative costs. See our previous discussion of section 107.

Under this proposal the role of the Director of Indian Education Programs is simply to receive and approve applications and to receive the required reports. The Secretary has authority to issue regulations relating to the discharge of duties assigned to the Secretary under this title but in all other matters the Secretary may not issue regulations. The major role anticipated for the BIA is to accept applications and reports from the tribes and then funnel money to them.

Such a limited scope of oversight is wholly inconsistent with the clear Federal responsibility to assure there is accountability both for Federal funds and for the quality of service being provided. We must have more involvement in the evaluation procedures and the reports must not only be submitted to BIA personnel but should be reviewed, and if a determination is made that changes are needed these personnel must have the authority to require the changes. We like the idea of the BIA playing more of an oversight role with our primary concern focusing on the results of the service offered rather than how each penny was spent. However, we cannot agree to the very limited role outlined in these bills when the ultimate responsibility for accountability rests with the BIA and the total cost continues to be borne by the Federal taxpayer.

The bill provides for a procedure to determine if new grant applications are feasible and should be funded. A long list of criteria are to be given equal weight in making such determination. We do not think it possible to give so many factors equal weight. New applications should be reviewed consistently but as written these sections are confusing and unworkable.

TITLE III—INDIAN EDUCATION ACT OF 1987

We defer to the Department of Education as to this title.

TITLE IV—MISCELLANEOUS PROVISIONS

Section 401 authorizes the appropriation each fiscal year for grants to the Navajo Community College of "an amount necessary to pay expenses incurred for—" a detailed and broad listing of items including among other things basic, developmental, vocational, technical, and special handicapped education costs, capital expenditures and improvements, summer and special interest pro-

grams, payments on debts and other obligations, and student housing and other services. The provision replaces an authorization for appropriations each fiscal year for grants to the NCC of "an amount equal to the amount necessary for operation and maintenance of the college, including, but not limited to, administrative, academic, and operations and maintenance costs." We object to the provision because it is unnecessary and because the meaning of some of the items (e.g., "exceptions and supplemental need account", "internal capital outlay funds", and "the provision of access to books and services") is not clear.

Section 402 concerns the Bureau's grant payments to the tribally controlled community colleges and the Navajo Community College. The method of disbursing the funds must be one that was used in FY 1987. The colleges are authorized to invest the funds in Federal obligations or Federally guaranteed or insured obligations and any investment income earned by the colleges shall be their property and may not be considered in determining eligibility for or the amount of Federal assistance to the colleges under any Federal law. We strongly object to this provision which constitutes a means of providing added Federal support to the colleges outside the budget and appropriation process.

Section 403 permits the BIA funds provided to the colleges to be treated as non-Federal funds for purposes of any Federal law calling for use of non-Federal funds for a project. We know of no justification for such special treatment which would lead to the inequitable and inefficient use of Federal funds and therefore oppose this provision.

Section 404 prohibits the disqualification for BIA general assistance payments of students enrolled in tribally controlled community colleges or "in a vocational technical center" if the students received such assistance during the three months before enrollment. The receipt of the general assistance may be taken into consideration in determining the amount of student assistance under a Federal law.

We agree with the premise of the provision that a welfare recipient should not be penalized because of enrollment in an educational or vocational training program and that such enrollment can contribute to eliminating the need for welfare assistance in the future. However, we are concerned that this provision as currently drafted will make it possible for a student to receive general assistance in lieu of or even in addition to funding for living expenses available from a variety of student financial aid programs. We strongly oppose any provision that would permit a student to receive Federal funding from any source in excess of his or her demonstrated unmet financial need.

Section 405 authorizes the Secretary to permit the use of BIA facilities, land, and equipment by tribal, student, and non-Federal organizations if the use does not interfere with the purpose for which the BIA administers them. The Secretary may charge the user for the additional costs incurred because of the use. We support the provision.

TITLE V—WHITE HOUSE CONFERENCE ON INDIAN EDUCATION

This is a new title requiring the President to call and conduct a White House Conference on Indian Education. The Department of the Interior would provide representatives to the conference and participate in a task force charged with planning and conducting the conference. The Assistant Secretary of Indian Affairs would serve on an advisory committee established to assist and advise the task force.

We strongly object to the calling of such a conference because we disagree with its basic premise, which is that the problems we face in Indian education can be assessed and resolved centrally by a select group of policy makers, bureaucrats and "experts" gathered in Washington, DC. We have repeatedly stated our view that the key to improving Indian education lies in decentralizing control of schools to the tribal/local level. Problems in education can best be solved by the educators closest to them, provided they are given the resources to do so. In our view the calling of a White House Conference, however well-meaning the participants, will not result in meaningful improvement in the day-to-day education of Indian children.

U.S. DEPARTMENT OF EDUCATION,
Washington, DC, November 3, 1987.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am writing to provide the views of the Department of Education on the substitute version of S. 1645, a bill to reauthorize certain Indian education programs, including programs administered by the Department, as approved by the Select Committee on Indian Affairs on October 14. I am writing now because the Department was not afforded an adequate opportunity prior to committee action to comment on new provisions in the substitute bill, and because I understand that the text of the bill will be added to S. 373, the omnibus "Robert T. Stafford Elementary and Secondary Education Improvement Act of 1987", when that bill is considered by the full Senate.

I support the reauthorization of programs under the Indian Education Act and I commend you and the Select Committee for accepting some of the recommendations concerning the Act that were included in the Department's reauthorization proposal and in my October 5 letter to you on the earlier version of S. 1645. I am particularly pleased that the Committee adopted our proposal to consolidate the provisions of the Act, currently scattered throughout several statutes, into a single, free-standing law. School districts, tribes, parents, and program officials will all find the Act much easier to understand and work with as a result. I also applaud the Committee's inclusion of our proposals to use average daily attendance data in computing formula grants under Part A of the Act and to make the maintenance-of-effort requirement under Part A comparable to other program statutes.

I regret, however, that the Committee retained various features of S. 1645 to which I have previously objected and that it added

several provisions that I also oppose. I understand further that the Department of the Interior continues to have major objections to this legislation, and defer to that Department on the provisions governing its operations.

Although I fully understand and support the desire to have qualified Indian staff members, not only in the Office of Indian Education (OIE) but also in other Department offices, I continue to object to the application of an Indian preference requirement to employment in OIE, as provided by section 341(d) of the bill. I recognize that certain improvements over the earlier version of this requirement have been made. Nonetheless, I remain opposed to the Indian preference mandate.

We cast a wide net in our recruitment efforts at the Department, and our record with respect to women and minorities is an exceptionally good one. We actively seek out the widest possible pool of applicants, and we respond to all applications for employment on merit and without regard to race, religion, sex, color, or national origin. Rigorous adherence to this principle and to the civil service regulations applicable to the entire Federal Government puts us in the strongest possible position to select the most qualified candidates—including Indians—for positions in the Office of Indian Education and throughout the Department. Further, many individuals who are not themselves Indians have served with distinction in the Indian education programs. I, for one, am reluctant to say to them that because they are black, or white, or Hispanic, or Asian, they are not qualified or desirable employees.

The Committee substitute also includes four new provisions that are objectionable. First, section 351(5)(B)(i) would expand the Act's definition of "local educational agency" so that any school operated by the BIA would be eligible for a Part A formula grant as if it were a local school district. This provision embodies both unwise policy and an unsound approach. The Part A formula grant program is intended to provide financial assistance to locally controlled schools, whether operated by a typical public school district or by an Indian tribe. Schools operated by the BIA are funded by appropriations made directly to the Department of the Interior and distributed by the BIA according to the complex Indian School Equalization Formula, which assigns weights to numerous factors to determine the amount that each school receives. It would be inconsistent with this Congressionally established formula, which other provisions of this bill would fine-tune, to provide an additional amount to each school under a different formula that ignores virtually all of those factors. Such programmatic overlap already exists for certain schools operated under contract with the BIA that receive funding under the Indian Education Act. It would be inappropriate to exacerbate the current situation by opening the program to BIA-operated schools.

In addition, it must be noted that extending eligibility to BIA schools would add about 30,000 students to the Part A program, which now serves about 320,000 Indian children. If program appropriations remain fairly constant, as they have for the past several years, this increase in students would reduce each local educational agency's and tribal school's award by close to nine percent. Finally, it makes no sense to treat each of the more than 100 schools run by

one Federal agency (Interior) as if it were an autonomous school district for purposes of applying for funds from another such agency (Education). Such an approach is administratively illogical, wasteful, and wholly unnecessary. If the Congress believes that additional funds are needed to operate the BIA schools, it may simply provide those funds through the normal appropriations process through which it already funds the basic operational costs of those schools and need not make them eligible for a completely separate program, administered by a different agency.

Second, under section 341(b)(2) of the bill, the Director of the Office of Indian Education would report directly to the Secretary, rather than to the Assistant Secretary for Elementary and Secondary Education, as has been the case since the Department was established. While I strongly support Indian Education programs, this direct reporting relationship is unnecessary. The Director of the Office of Indian Education should continue to report to the Assistant Secretary, who can provide needed administrative resources and guidance. Moreover, continued placement within the Office of Elementary and Secondary Education will facilitate coordination with other programs, such as Chapter 1, Impact Aid, and Drug-Free Schools, that have a major impact on Indian education.

Third, I object strongly to section 314(d)(4) of the bill, which would require the Department to continue using the Part A student eligibility ("506") forms that were used for the 1985–1986 school year. This requirement inappropriately intrudes into operational details that are best left to the executive branch. It would bar any revisions to the form, however beneficial and uncontroversial they might be, and is plainly inconsistent with another provision of S. 1645 that would amend the definition of "Indian" to make clear that one's membership in a tribe, band, or other organized group of Indians is to be determined by reference to that tribe, band, or group's definition of member. At the very least, the 506 form would need to be revised to reflect this statutory amendment. Moreover, in the October 5 Federal Register, the Department published proposed regulations, along with a proposed revised form, that would spell out the exact types of information that we will accept to establish a child's eligibility. Those regulations and revised 506 form were published in response to concerns that the current form in not sufficiently clear and that it has led to reduced compliance with documentation requirements. The proposed regulations and form are fully consistent with the statutory definition of Indian and, in fact, emphasize the very point about deference to a tribe's definition of a tribal member that is made in S. 1645. I strongly urge that the Congress allow Indian tribes and other interested parties to respond to these proposed regulations and revised form, rather than to enact into law a particular version of a Government form.

Fourth, section 323(d)(2) would require the Department to notify each recipient under the Indian Fellowship Program of the amount of the fellowship and any stipends for an academic term at least 45 days before the start of that term. This requirement is another example of inappropriate statutory direction of the details of program administration and should be deleted. Although I recognize that there have been delays in advising some fellowship recipients of

their award amounts, this problem is being addressed through routine management practices and need not be addressed by prescriptive and inflexible statutory language.

Finally, for the reasons I indicated in my October 5 letter, I remain opposed to the creation of a separate gifted and talented program under the Indian Education Act, and I urge favorable action on those aspects of our reauthorization proposal, such as a term-of-employment requirement to promote program objectives and accountability under the personnel training and fellowship programs, that have not been incorporated into S. 1645.

I appreciate your consideration of these concerns. We will be pleased to work with you and the Committee to produce a sound and effective bill that will continue to promote the improvement of educational quality for Indian children and adults. Becuase I understand that the text of S. 1645 will be added to S. 373, the omnibus education reauthorization bill, I am sending an identical letter to Senator Kennedy.

The Office of Management and Budget advises that there is no objection to the submission of this report to the Congress from the standpoint of the Administration's program.

Sincerely,

WILLIAM J. BENNETT, *Secretary.*

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

EDUCATION AMENDMENTS OF 1978

TITLE XI—INDIAN EDUCATION

PART B—BUREAU OF INDIAN AFFAIRS PROGRAMS

§ 2001. Standards for basic education of Indian children in Bureau or contract schools

(a) STUDIES AND SURVEYS FOR ESTABLISHMENT AND REVISION OF STANDARDS.—The Secretary, in consultation with the Secretary of Education, and in consultation with Indian organizations and tribes, shall carry out or cause to be carried out by contract with an Indian organization such studies and surveys, making the fullest use possible of other existing studies, surveys, and plans, as are necessary to establish and revise standards for the basic education of Indian children attending Bureau schools and [Indian controlled contract schools (hereinafter referred to as "contract schools")] *contract schools*. Such studies and surveys shall take into account factors such as academic needs, local cultural differences, type and level of language skills, geographical isolation and appropriate teacher-student ratios for such children, and shall be

directed toward the attainment of equal educational opportunity for such children.

* * * * * * *

(g) CLOSURE, CONSOLIDATION, OR SUBSTANTIAL CURTAILMENT OF BUREAU SCHOOLS; STANDARDS AND PROCEDURES; REPORT TO CONGRESS; EFFECTIVE DATE.—(1) Except as specifically required by statute, no school or peripheral dormatory operated by the Bureau of Indian Affairs on or after August 15, 1985, may be closed or consolidated or have its program substantially curtailed unless done according to the requirements of this subsection, except that, in those cases where the tribal governing body, or the local school board concerned (if so designated by the tribal governing body), requests closure or consolidation, the requirements of this subsection shall not apply. The requirements of this subsection shall not apply when a temporary closure, consolidation, or substantial curtailment is required by plant conditions which constitute an immediate hazard to health and safety.

(2) The Secretary shall, by regulation, promulgate standards and procedures for the closing, consolidation, or substantial curtailment of Bureau schools in accordance with the requirements of this subsection.

(3) Such standards and procedures shall require that whenever closure, consolidation, or substantial curtailment of a school is under active consideration or review by any division of the Bureau or the Department of the Interior, the affected tribe, tribal governing body, and designated local school board will be notified as soon as such consideration or review begins, kept fully and currently informed, and afforded an opportunity to comment with respect to such consideration or review. When a formal decision is made to close, consolidate, or substantially curtail a school, the affected tribe, tribal governing body, and designated local school board shall be notified at least 6 months prior to the end of the school year preceding the proposed effective date. Copies of any such notices and information shall be transmitted promptly to the Congress and published in the Federal Register.

(4) The Secretary shall make a report to Congress, the affected tribe, and the designated local school board describing the process of the active consideration or review referred to in paragraph (3). At a minimum, the report shall include a study of the impact of such action on the student population, with every effort to identify those students with particular educational and social needs, and to insure that alternative services are available to such students. Such report shall include the description of the consultation conducted between the potential service provider, current service provider, parents, tribal representative and the tribe or tribes involved, and the Director of the Office of Indian Education Programs within the Bureau regarding such students. No irreversible action may be taken in furtherance of any such proposed school closure, consolidation, or substantial curtailment (including any action which would prejudice the personnel or programs of such school) until the end of the first full academic year after such report is made.

(5)(A) The Secretary may transfer the operation, or the facilities, of—

(i) any Bureau funded school that is operated on or after April 1, 1987, or

(ii) any program of such a school that is operated on or after April 1, 1987,

only if the tribal governing body approves such transfer.

(B) If the Secretary, or any other officer or employee of the Federal Government, is considering making a request to the Congress for legislation to authorize a transfer otherwise prohibited under subparagraph (A), the Secretary shall comply with the requirements applicable to school closures under this subsection before such request is made to the Congress.

(6) No action may be taken by the Secretary to close, consolidate, or substantially curtail a Bureau funded boarding school by reason of the failure of such school to meet the criteria established under section 1122 during any fiscal year for which the Secretary has not submitted in accordance with section 1122(c) the plan required under section 1122(c); and

(7) If—

(A) a Bureau school is temporarily closed or consolidated, or the programs of a Bureau school are substantially curtailed by reason of plant conditions that constitute an immediate hazard to health and safety, and

(B) the Secretary estimates that the closure, consolidation, or curtailment will be more than 1 year in duration,

the Secretary shall submit to the Congress, by no later than the date that is 6 months after the date on which the closure, consolidation, or curtailment is initiated, a report which sets forth the reasons for such temporary actions and the actions the Secretary is taking to eliminate the conditions that constitute the hazard.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are hereby authorized to be appropriated such sums as may be necessary, for academic program costs, in order to bring all Bureau and contract schools up to the level required by the applicable standards established under this section.

(i) INSTRUCTION RELATING TO ALCOHOL AND SUBSTANCE ABUSE PREVENTION AND TREATMENT.—(1) All schools funded by the Bureau of Indian Affairs shall include within their curriculum a program of instruction relating to alcohol and substance abuse prevention and treatment. The Assistant Secretary shall provide the technical assistance necessary to develop and implement such a program for students in kindergarten and grades 1 through 12, at the request of—

(A) any Bureau of Indian Affairs school (subject to the approval of the school board of such school); or

(B) any school board of a school operating under a contract entered into under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) [25 U.S.C.A. § 450 et seq.].

(2) In schools operated directly by the Bureau of Indian Affairs, the Secretary shall, not later than 120 days after October 27, 1986, provide for—

(A) accurate reporting of all incidents relating to alcohol and substance abuse; and

(B) individual student crisis intervention.

(3) The programs requested under paragraph (1) shall be developed in consultation with the Indian tribe that is to be served by such program and health personnel in the local community of such tribe.

(4) Schools requesting program assistance under this subsection are encouraged to involved family units and, where appropriate, tribal elders and Native healers in such instructions.

(j) For purposes of this section, the term "tribal governing body" means, with respect to any school, the tribal governing body, or tribal governing bodies, that represent at least 90 percent of the students served by such school.

(k)(1) The Secretary shall prescribe regulations governing the determination of eligibility for schools to become Bureau funded schools and for Bureau funded schools to add grade levels or otherwise expand their programs in a manner which might increase the amount of funding from the Bureau that the schools would otherwise be eligible to receive without the expansion. The regulations shall provide for the eligibility determination to be based on geographic and demographic factors and the history and record of success or failure of—

(A) the proposed school or the school proposing to add a grade level or otherwise expand its program, and

(B) the public schools or other alternative providers, or potential providers, of the services which the school proposes to provide with the financial assistance of the Bureau.

A determination to deny eligibility under the regulations may not be based primarily on the proximity of other education facilities. The regulations shall provide for the invitation and consideration of information and views from the tribes affected by the determination of eligibility, the local education agencies in the area, and all other interested parties.

(2) Notwithstanding any other provision of law, if the school board of the Bureau funded schools at the Pueblo of Zia and the Tama Settlement vote within the 2-year period beginning on the date of enactment of the Indian Education Amendments of 1987 to expand each of the schools shall be so expanded at the beginning of the next school year occurring after the vote.

§ 2002. National criteria for dormitory situations

(a) STUDY FOR ESTABLISHMENT OF CRITERIA; PURPOSE; SCOPE OF CRITERIA.—The Secretary, in consultation with the Secretary of Education, and in consultation with Indian organizations and tribes, shall conduct or cause to be conducted by contract with an Indian organization, a study of the costs applicable to boarding arrangements for Indian students provided in Bureau and contract schools, for the purpose of establishing national criteria[1] for such dormitory situations. Such criteria shall include adult-child ratios, needs for counselors (including special needs related to off-reservation boarding arrangements), space, and privacy.

(b) PROPOSAL, ESTABLISHMENT, REVISION, ETC.—Within fifteen months of November 1, 1978, the Secretary shall propose such cri-

teria, and shall distribute such proposed criteria to the tribes and publish such proposed criteria in the Federal Register for the purpose of receiving comments from the tribes and other interested parties. Within eighteen months of November 1, 1978, the Secretary shall establish final criteria, distribute such criteria to all the tribes, and publish such criteria in the Federal Register. The Secretary shall revise such criteria periodically as necessary. Prior to any revision of such criteria, the Secretary shall distribute such proposed revision to all the tribes, and publish such proposed revision in the Federal Register, for the purpose of receiving comments from the tribes and other interested parties.

(c) IMPLEMENTATION AUTHORITY OF ESTABLISHED APPLICABLE CRITERIA; SUBMISSION OF PLAN TO CONGRESSIONAL COMMITTEES FOR COMPLIANCE WITH ESTABLISHED APPLICABLE CRITERIA; CONTENTS OF PLAN.—The Secretary shall begin to implement the criteria established under this section immediately upon the date of their establishment. No later than January 1, 1981, and at each time thereafter that the annual budget request for Bureau educational services is presented, the Secretary shall submit to the appropriate committees of Congress a detailed plan to bring all Bureau and contract boarding schools up to the criteria established under this section. Such plan shall include, but not be limted to, predictions for the relative need for each boarding school in the future, detailed information on the status of each school in relation to the criteria established under this section, specific cost estimates for meeting such criteria at each school, and specific time lines for bringing each school up to the level required by such criteria.

(d) The criteria established under this section may be waived in the same manner as the standards provided under section 1121(b) may be waived under section 1121(d).

[(d)]*(e)* AUTHORIZATION OF APPROPRIATIONS.—There are hereby authorized to be appropriated such sums as may be necessary in order to bring each school up to the level required by the criteria established under this section.

[§ 2003. Regulations implementing standards and criteria requirements

[The Secretary shall establish such regulations as are necessary to carry out sections 2001 and 2002 of this title within eighteen months after November 1, 1978.]

REGULATIONS

SEC. 1123. (a)(1) Prior to the publication in the Federal Register of any regulation or rule, or amendment to any regulation or rule, relating to Indian education, the Secretary shall—

(A) submit the regulation, rule, or amendment to the review panels established under paragraph (2), and

(B) take into account comments and advice of the review panels.

(2) The Secretary shall establish regulatory reivew panels for each area office of the Bureau in which a Bureau funded school is located.

(3) Each review panel established under paragraph (2) shall include—

(A) one administrator of a Bureau funded school,

(B) one teacher at a Bureau funded school,

(C) one parent who is a member of the local school board of a Bureau funded school,

(D) one representative of each Indian tribe, or group of Indian tribes, having at least 500 members, and

(E) one representative of each tribally controlled community college,

that is located within the geographical jurisdiction of each agency office of the Bureau within the jurisdiction of the area office for which the review panel is established.

(4) The review panels established under paragraph (2) shall not be subject to the Federal Advisory Committee Act.

(5) If the Secretary determines that—

(A) an emergency situation exists, and

(B) a temporary regulation, rule, or amendment to a regulation or rule is needed within a limited period of time to assist in the operation of a Bureau funded school, or in any education program of the Bureau,

the Secretary may publish in the Federal Register the initial notice of such temporary regulation, rule, or amendment without meeting the requirements of paragraph (1), but the Secretary shall, as soon as practicable, take the actions described in paragraph (1) before such temporary regulation, rule, or amendment takes effect.

(6) This subsection shall not apply with respect to a regulation, rule, or amendment to a regulation or rule if the regulation, rule, or amendment has been drafted and was under formal review by the Department of the Interior before October 1, 1987.

(b)(1) No regulation, rule, or amendment to any regulation or rule, relating to Indian education shall be published in the Federal Register in final form before the close of the 90-day period beginning on the date on which the regulation, rule, or amendment is published in the Federal Register in preliminary form. The Secretary shall accept and consider comments from the public regarding the regulations, rules, or amendment during such 90-day period.

(2) Paragraph (1) shall not apply to a regulation, rule, or amendment to a regulation or rule, if the regulation, rule, or amendment was published in the Federal Register in preliminary form before October 1, 1987.

(c) No provision of law restricting or prohibiting communications by an employee of the Bureau shall apply to communications regarding regulations, rules, or amendments to regulations or rules, that relate to Indian education.

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§ 2008. Allotment formula

(a) REGULATIONS ESTABLISHING FORMULA FOR MINIMUM ANNUAL AMOUNT OF FUNDS FOR EACH SCHOOL; CONSIDERATIONS; REVISION.—

* * * * * * *

(c) IMPLEMENTATION OF FORMULA; RESTRICTION OF FORMULA AMOUNTS FOR FISCAL YEARS 1980 AND 1981; EQUAL ALLOWANCE FOR LOCAL SCHOOL BOARD TRAINING AND ACTIVITIES; AMOUNT FOR ADMINISTRATION AND INDIRECT COSTS.—[(1) The formula established under subsection (a) of this section shall be implemented for fiscal year 1980 and each succeeding fiscal year, except that—

[(A) for fiscal year 1980, no school shall as a consequence of such formula receive less than 90 per centum, nor more than 120 per centum, of the funds it received from Bureau education funds for fiscal year 1979;

[(B) for fiscal year 1981, no school shall as a consequence of such formula receive less than 70 per centum, nor more than 170 per centum, of the funds it received from Bureau education funds for fiscal year 1979; and

[(C) for fiscal year 1982 and any succeeding fiscal year the formula shall be fully implemented.] *(1) For fiscal year 1989, and for each subsequent fiscal year, the Secretary shall adjust the formula established under subsection (a) to—*

(A) use—

(i) a weighted unit of 1.2 for each eligible Indian student enrolled in the seventh and eighth grades of the school,

(ii) a weighted unit of 2.0 for each eligible Indian student that is 3 or 4 years of age and is enrolled in the school,

(iii) a weighted unit of 2.0 for each eligible Indian student that is gifted and talented and is enrolled in the school on a full-time basis, and

(iv) a weighted unit of 1.5 for each eligible Indian student that is gifted and talented and is enrolled in the school on a part-time basis,

in considering the number of eligible Indian students served by the school;

(B) consider a school with an average daily attendance of less than 50 eligible Indian students as having an average daily attendance of 50 eligible Indian students for purposes of implementing the adjustment factor for small schools;

(C) take into account the provision of residential services on a less than 9-month basis at a school when the school board and supervisor of the school determine that a less than 9-month basis will be implemented for the school year involved; and

(D) provide additional funding to schools that are required by law to meet State standards which are in addition to minimum standards required for accreditation.

(2) All Bureau and contract schools receiving funds under this section shall receive an equal amount as an allowance for local school board training and activities including, notwithstanding any other provision of law, meeting expenses and the cost of membership in or support of organizations engaged in activities on behalf of Indian education.

[(3) The Secretary shall, subject to appropriations, provide to all contract schools an amount for administrative and indirect costs which is at least equal to the amount which would be expended by the Secretary if such school were directly operated by the Secretary. The Secretary shall take such actions as are necessary to provide contract schools with the full amount as determined by this

paragraph without reducing funds available under subsection (a) of this section.]

ADMINISTRATIVE COST GRANTS

SEC. 1128A. (a)(1) The Secretary shall, subject to the availability of appropriated funds, provide grants to each tribe or tribal organization operating a contract school in the amount determined under this section with respect to the tribe or tribal organization for the purpose of paying the administrative and indirect costs incurred in operating contract schools in order to—

(A) enable tribes and tribal organizations operating such schools, without reducing direct program services to the beneficiaries of the program, to provide all related administrative overhead services and operations necessary to meet the requirements of law and prudent management practice, and

(B) carry out other necessary support functions which would otherwise be provided by the Secretary or other Federal officers or employees, from resources other than direct program funds, in support of comparable Bureau operated programs.

(2) Amounts appropriated to fund the grants provided under this section shall be in addition to, and shall not reduce, the amounts appropriated for the program being administered by the contract schools.

(b) The amount of the grant provided to each tribe or tribal organization under this section for each fiscal year shall be determined by applying the administrative cost percentage rate of the tribe or tribal organization to each of the direct cost programs operatd by the tribe or tribal organization, for which funds are received from or through the Bureau, as follows:

(1) For all direct cost programs operated by the tribe or tribal organization which share common administrative cost functions, funds for which are received from or through the Bureau, the administrative cost percentage rate shall be applied to the total direct costs of each such program.

(2) For other direct cost programs operated by the Indian tribe or tribal organization which share common administrative cost functions with those in paragraph (1), from whatever source derived, the administrative cost percentage rate shall be allowable as a predetermined indirect cost rate. At the option of the Indian tribe or tribal organization, however, a multiple indirect cost rate system may be established instead, for such other programs, using accepted procedures for so doing.

(c) For purposes of this section, the administrative cost percentage rate for a contract school for a fiscal year is equal to the sum of—

(1) the percentage determined by dividing—

(A) the sum of—

(i) the amount equal to—

(I) the direct cost base of the tribe or tribal organization for the fiscal year, multiplied by

(II) the minimum base rate, plus

(ii) the amount equal to—

(I) the standard direct cost base, multiplied by

(II) the maximum base rate, by

(B) the sum of—

(i) the direct cost base of the tribe or tribal organization for the fiscal year, plus

(ii) the standard direct cost base, plus

(2) the isolation adjustment percentage of the tribe or tribal organization, if any, plus

(3) the multiple program adjustment percentage of the tribe or tribal organization, if any.

The administrative cost percentage rate shall be determined to the one hundredth of a decimal point.

(d)(1)(A) Funds received by a contract school as grants under this section for tribal elementary or secondary educational programs may be combined by the contract school into a single administrative cost amount without the necessity of maintaining separate funding source accounting.

(B) Indirect cost funds for programs at the school which share common administrative services with tribal elementary or secondary educational programs may be included in the administrative cost account described in subparagraph (A).

(2) Funds received as grants under this section with respect to tribal elementary or secondary education programs shall remain available to the contract school without fiscal year limitation and without diminishing the amount of any grants otherwise payable to the school under this section for any fiscal year beginning after the fiscal year for which the grant is provided.

(3) The Secretary shall be reimbursed by other agencies of the Federal Government for administrative cost allowances paid in support of programs administered by the Bureau on behalf of Indians for which appropriations are made to such other agencies, but shall not reduce payments of grants under this section to tribes and tribal organizations as a result of such appropriations.

(4) Funds received as grants under this section for Bureau funded programs operated by a tribe or tribal organization under a contract or agreement shall not be taken into consideration for purposes of indirect cost underrecovery and overrecovery determinations by any Federal agency, for any other funds, from whatever source derived.

(e) For purposes of this section—

(1)(A) The term "administrative cost" means the costs of necessary administrative functions which —

(i) the tribe or tribal organization incurs as a result of operating a tribal elementary or secondary educational program,

(ii) are not customarily paid by comparable Bureau operated programs out of direct program funds, and

(iii) are either—

(I) normally provided for comparable Bureau programs by Federal officials using resources other than Bureau direct program funds, or

(II) are otherwise required of tribal self-determination program operators by law or prudent management practice.

(B) The term "administrative cost" may include, but is not necessarily limited to—

(i) contract (or other agreement) administration,

(ii) executive, policy, and corporate leadership and decision making;

(iii) program planning, development, and management;

(iv) fiscal, personnel, property, and procurement management;

(v) related office services and record keeping; and

(vi) costs of necessary insurance, auditing, legal, safety and security services.

(2) The term "Bureau elementary and secondary functions" means—

(A) all functions funded at Bureau schools by the Office of Indian Education Programs of the Bureau;

(B) all programs—

(i) funds for which are appropriated to other agencies of the Federal Government, and

(ii) which are administered for the benefit of Indians through Bureau schools; and

(C) All operation, maintenance, and repair funds for facilities and government quarters used in the operation or support of elementary and secondary education functions for the benefit of Indians, from whatever source derived.

(3) The term "tribal elementary or secondary educational programs" means all Bureau elementary and seconary functions, together with any other Bureau programs or portions of programs (excluding funds for social services that are appropriated to agencies other than the Bureau and are expended through the Bureau, funds for major subcontracts, construction, and other major capital expenditures, and unexpended funds carried over from prior years) which share common administrative cost functions, that are operated directly by a tribe or tribal organization under a contract or agreement with the Bureau.

(4)(A) Except as otherwise provided in this paragraph, the direct cost base of a tribe or tribal organization for the fiscal year is the aggregate direct cost program funding for all tribal elementary or secondary educational programs operated by the tribe or tribal organization during—

(i) the second fiscal year preceding such fiscal year, or

(ii) if such programs have not been operated by the tribe or tribal organization during the 2 preceding fiscal years, the first fiscal year preceding such fiscal year.

(B) In the case of Bureau elementary or secondary education programs which have not previously been operated by a tribe or tribal organization under contract or agreement with the Bureau, the direct cost base for the initial year shall be the projected aggregate direct cost program funding for all Bureau elementary and secondary functions to be operated by the tribe or tribal organization during that fiscal year.

(5) The term "maximum base rate" means either—

(A) As a percentage determined (on the basis of studies conducted under subsection (f)) by the Secretary under this subparagraph, and published in the Fedeal Register, that ensures that the amount of the grants provided under this section will provide adequate (but not excessive) funding of

the administrative costs of the smallest tribal elementary or secondary educational programs, or

(B) if no percentage has been determined under subparagrah (A), 50 percent.

(6) The term "minimum base rate" means either—

(A) a percentage determined (on the basis of studies conducted under subsection (f)) by the Secretary under this subparagrpah, and published in the Federal Register, that ensures that the amount of the grants provided under this section will provide adequate (but not excessive) funding of the administrative costs of the largest tribal elementary or secondary educational programs, or

(B) if no percentage has been determined under subparagraph (A), 12 percent.

(7) The term "standard direct cost base" means either—

(A) an amount determined (on the base of studies conducted under subsection (f)) by the Secretary under this subparagraph, and published in the Federal Register, to be the aggregate direct cost funding level for which the percentage determined under subsection (c)(1) will—

(i) be equal to the median between the maximum base rate and the minimum base rate, and

(ii) ensure that the amount of the grants provided under this section will provide adequate (but not excessive) funding of the administrative costs of tribal elementary or secondary educational programs closest to the size of the program, or

(B) if no amount has been determined under subparagraph (A), $600,000.

(8) The term "isolation adjustment percentage" means either—

(A) the percentage determined in accordance with a formula developed (on the basis of the studies conducted under subsection (f)) by the Secretary under this subparagraph, and published in the Federal Register, that takes into account factors similar to those taken into account under subparagraph (B), or

(B) if a formula has not been developed under subparagraph (A), the percentage determined at a rate of 1 percentage point for each 100 miles that the average of the distances from the principal offices of the tribe or tribal organization to each of the following exceeds 20 miles:

(i) The closest offices of a general full-service banking institution capable of handling draw-downs for Federal letters of credit.

(ii) The closest urban center for cost effective procurement of bulk school, office, and janitorial supplies, equipment, and related maintenance and repair items or services.

(iii) The closest United States Post Office.

(iv) The area and agency offices of the Bureau at which business of the tribe or of the tribal organization is normally conducted with the Bureau by administra-

tive personnel or board members of the tribe or tribal organization.

(9) The term "multiple program adjustment percentage" means a percentage determined at—

(A) a rate determined (on the basis of the studies conducted under subsection (f)) by the Secretary under this subparagraph and published in the Federal Register, or

(B) if no rate has been determined under subparagraph (A), the rate of one-quarter of a percentage point for—

(i) each separate school in excess of one, and

(ii) each Bureau program, or portion of a program, in addition to the Bureau elementary and secondary functions,

which is operated by the tribe or tribal organization under a contract or agreement with the Bureau and shares common administrative cost services with the Bureau elementary or secondary functions.

(10) The size of tribal elementary or secondary educational programs are determined by the aggregate direct cost program funding level for all Bureau funded programs which share common administrative cost functions.

(f)(1) Upon the enactment of the Indian Education Amendments of 1987, the Secretary shall conduct such studies as may be needed to establish an empirical basis for determining relevant values, percentages, mileages, or other factors substantially affecting the required administrative costs of tribal elementary and secondary educational programs, using the formula set forth in subsection (c). Such studies shall—

(A) be conducted in full consultation (in accordance with section 1130) with—

(i) the tribes and tribal organizations that are affected by the application on such formula, and

(ii) all national and regional Indian organizations of which such tribes and tribal organizations are typically members;

(B) be conducted on-site at a representative statistical sample of the tribal elementary or secondary educational programs under a contract entered into with a nationally reputable public accounting and business consulting firm;

(C) take into account the availability of skilled labor, commodities, business and automatic data processing services, related Indian preference and Indian control of education requirements, and any other market factors found substantially to affect the administrative costs and efficiency of each such tribal elementary or secondary educational program studied in order to assure that all required administrative activities can reasonably be delivered in a cost effective manner for each such program, given an administrative cost allowance generated by the values, percentages, or other factors found in the studies to be relevant in such formula;

(D) identify, and quantify in terms of percentages of direct program costs, any general factors arising from geographic isolation, or numbers of programs administered, independent of

program size factors used to compute a base administrative cost percentage in such formula; and

(E) identify any other incremental cost factors substantially affecting the costs of required administrative cost functions at any of the tribal elementary or secondary educational programs studied and determine whether the factors are of general applicability to other such programs, and (if so) how they may effectively be incorporated into such formula.

(2) Determinations described in paragraph (1)(C) shall be based on what is pragmatically possible to do at each location studied, given prudent management practice, irrespective of whether required administrative services were actually or fully delivered at these sites, or other services were delivered instead, during the period of the study.

(3) Upon completion of the studies conducted under paragraph (1), but in no case later than October 1, 1988, the Secretary shall submit to the Congress a report on the findings of the studies, together with determinations based upon such findings that are made by the Secretary under subsection (e) and affect the definitions of terms used in the formula that is set out in subsection (c).

(4) The Secretary shall include in the Bureau's justification for each appropriations request for each fiscal year beginning after fiscal year 1988, a projection of the overall costs associated with the formula set forth in subsection (c) for all tribal elementary or secondary educational programs which the Secretary expects to be funded in the fiscal year for which the appropriations are sought.

(g) There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of this section.

(h)(1) Notwithstanding any other provision of this section, the amount of the grants provided under this section for fiscal year 1988 shall—

(A) in lieu of being determined under subsection (b), be determined for each tribal elementary or secondary educational program on the same basis that indirect costs were determined for such programs for fiscal year 1987, and

(B) be subject to the provisions of subsection (d).

(2) Notwithstanding any other provision of this section, the amount of the grant provided under this section for fiscal year 1989 with respect to each tribal elementary and secondary educational program that was operated by a tribe or tribal organization in fiscal year 1988 shall be equal to—

(A) if the amount of the grant determined under subsection (b) for fiscal year 1989 with respect to such program exceeds the amount received by the tribe or tribal organization with respect to such program for administrative costs for fiscal year 1987 (or fiscal year 1988 if such program was not operated by the tribe or tribal organization during fiscal year 1987), the sum of—

(i) such amount received, plus

(ii) one third of the excess of—

(I) such amount determined under subsection (b), over

(II) such amount received, or

(B) if such amount received exceeds such amount determined under subsection (b), the excess of—

(i) such amount received, over

(ii) an amount equal to one third of the excess of—

(I) such amount received, over

(II) such amount determined under subsection (b).

(3) Notwithstanding any other provision of this section, the amount of the grants provided under this section for fiscal year 1990 with respect to each tribal elementary and secondary educational program that was operated by a tribe or tribal organization in fiscal year 1988 shall be equal to—

(A) if the amount of the grant determined under subsection (b) for fiscal year 1990 with respect to such program exceeds the amount received by the tribe or tribal organization with respect to such program for administrative costs for fiscal year 1989, the sum of—

(i) such amount received, plus

(ii) one half of the excess of—

(I) such amount determined under subsection (b), over

(II) such amount received, or

(B) if such amount received exceeds such amount determined under subsection (b), the excess of—

(i) such amount received, over

(ii) an amount equal to one half of the excess of—

(I) such amount received over,

(II) such amount determined under subsection (b).

(4) During fiscal years 1989 and 1990, any tribe or tribal organization that operates a school under a contract or agreement that was entered into with the Bureau under the Indian Self-Determination and Education Assistant Act shall make an election applicable to all elementary or secondary educational programs provided by the tribe or tribal organization to either—

(A) receive grants under this section with respect to such programs, or

(B) receive funds for the indirect costs of such program under the terms of such contract or agreement.

§ 2009. Uniform direct funding and support

(a) REGULATIONS ESTABLISHING DIRECT FUNDING AND SUPPORT SYSTEM FOR SCHOOL; CRITERIA; NOTICE OF FUNDING; FISCAL YEAR AVAILABILITY OF FUNDS; TRANSITION TO FORWARD FUNDING METHOD OF DISTRIBUTION; PUBLICATION OF SCHOOL ALLOTMENTS; EXPENDITURES FOR SUPPLIES AND EQUIPMENT WITHOUT COMPETITIVE BIDDING.—(1) Within six months after November 1, the Secretary shall establish, by regulation adopted in accordance with section 2018 of this title, a system for the direct funding and support of all Bureau and contract schools. Such system shall allot funds, in accordance with section 2008 of this title. Amounts appropriated for distribution under this section may be made available under paragraph (2) or under paragraph (3) as provided in the appropriation Act.

(2)(A) For the purpose of affording adequate notice of funding available pursuant to the allotments made by section 2008 of this title, amounts appropriated in the appropriations Act for any fiscal

year shall become available for obligation by the affected schools on October 1 of the fiscal year for which they are appropriated without further action by the Secretary, and shall remain available through six months of the succeeding fiscal year. In order to effect the transition to the advance funding method of distribution, described in the preceding sentence, there are authorized to be appropriated, in an appropriations Act or Acts for the same fiscal year, two separate appropriations for such allotments, the first of which shall not be subject to the preceding sentence.

(B) The Secretary shall, on the basis of the amount appropriated in accordance with this paragraph—

(i) publish, on July 1 preceding the fiscal year for which the funds are appropriated, allotments to each affected school made under section 2008 of this title of 75 per centum of such appropriations, based on the school's student count for the preceding academic year, and

(ii) publish no later than November 1 of the fiscal year for which funds are appropriated the allotments to be made from the remaining 25 per centum, adjusted to reflect actual student count, such funds to be immediately available for obligation by the affected schools.

(3)(A) For the purpose of affording adequate notice of funding available pursuant to the allotments made by section 2008 of this title, amounts appropriated in an appropriation Act for any fiscal year shall become available for obligation by the affected schools on July 1 of the fiscal year in which they are appropriated without further action by the Secretary, and shall remain available for obligation through the succeeding fiscal year. In order to effect a transition to the forward funding method of distribution described in the preceding sentence, there are authorized to be appropriated, in an appropriation Act or Acts for the same fiscal year, two separate appropriations for such allotments, the first of which shalll not be subject to that preceding sentence.

(B) The Secretary shall, on the basis of the amount appropriated in accordance with this paragraph—

(i) publish, on July 1 preceding the fiscal year for which the funds are appropriated, allotments to each affected school made under section 2008 of this title of 85 percent of such appropriation; and

(ii) publish, no later than September 30 of such preceding fiscal year, the allotments to be made under section 2008 of this title of the remaining 15 percent of such appropriation, adjusted to reflect actual student attendance.

[(4) Pursuant to guidelines established by the Assistant Secretary, notwithstanding any law or regulation governing procurement by Federal agencies, the supervisor of each school receiving funds under section 2008 of this title shall, subject to school board approval, have the authority to expend no more than $25,000 annually of the funds allotted by section 2008 of this title to procure supplies and equipment, without competitive bidding.]

(4) Notwithstanding any law or regulation, the supervisor of a Bureau school may expend an aggregate of no more than $25,000 of the amount allotted the school under section 1128 to acquire sup-

plies and equipment for the school without competitive bidding if for each procurement—

(A) the cost for any single item purchased does not exceed $10,000;

(B) the school board approves the procurement in advance;

(C) the supervisor certifies that the cost is fair and reasonable;

(D) the documents relating to the procurement executed by the supervisor or other school staff cite this paragraph as authority for the procurement; and

(E) the transaction is documented in a journal maintained at the school clearly identifying when the transaction occurred, what was acquired and from whom, the prices paid, the quantities acquired, and any other information the supervisor or board considers relevant.

(5) If a sequestration order issued under the Balanced Budget and Emergency Deficit Control ACt of 1985 reduces the amount of funds available for allotment under section 1128 for any fiscal year by more than 5 percent—

(A) the Secretary may, notwithstanding any other provision of law, use—

(i) funds appropriated for the operation of any Bureau school that is closed or consolidated, and

(ii) funds appropriated for any program that has been curtailed at any Bureau school, to fund allotments made under section 1128, and

(B) the Secretary may waive the application of the provisions of section 1121(g) with respect to the closure or consolidation of a school, or the curtailment of a program at a school, during such fiscal year if the funds described in clauses (i) and (ii) of subparagraph (A) with respect to such school are used to fund allotments made under section 1128 for such fiscal year.

§ 2010. Policy for Indian control of Indian education

[It shall**]** *(a) It shall* be the policy of the **[**Bureau**]** *the Secretary and the Bureau* in carrying out the functions of the Bureau, to facilitate Indian control of Indian affairs in all matters relating to education.

(b)(1) The Secretary shall consult with Indian tribes and tribal organizations in the development of policy under this Act.

(2)(A) The Secretary, or a delegate of the Secretary, shall conduct regional meetings with Indian tribes and tribal organizations, on a semi-annual basis, for the purpose of consulting with the Indian tribes and tribal organizations on matters relating to Indian education.

(B) Notice of each regional meeting conducted under subparagraph (A) shall be published in the Federal Register at least 30 days prior to the date of the meeting and shall include the specific topics that will be discussed at the meeting.

(C) At each meeting conducted under subparagraph (A), the Secretary, or a delegate of the Secretary, shall—

(i) provide information on all matters relating to Indian education (including budgetary and regulatory matters and administrative matters that could alter the delivery of services by the

Bureau) that are being considered (or are likely to be considered) for change during the succeeding 6-month period, and

(ii) seek the advice of the Indian tribes and tribal organizations participating in the meeting on such matters and on any other matters of interest to the participants (including matters affecting other programs of the Department of the Interior or of any other department or agency of the Federal Government).

(D) Meetings conducted under paragraph (3), consultations required under any other provision of this Act or of any other law, or any other meetings or discussions conducted with Indian tribes or tribal organizations may not be considered as substitutes for the regional meetings required under subparagraph (A).

(3)(A) The Secretary shall—

(i) keep Indian tribes and tribal organizations informed of all plans and activities of the Bureau which affect, or relate to, Bureau or contract schools, or education programs, that serve the particular Indian tribe or tribal organization, and

(ii) shall invite active participation of the Indian tribe or tribal organization in the decision making process regarding changes to be made, or needs to be met, in these schools and programs.

Planning by the Secretary for individual Bureau or contract schools and education programs shall be undertaken in a cooperative and consultative manner based upon an open exchange of information and views.

(B) When considering construction or expansion of any school, and when considering proposals to Congress for the closure, consolidation, curtailment, or transfer of any school or school dormitory, the Secretary shall, from the initial stages, consult with the affected Indian tribe or tribes and with the affected school board and school organizations, Indian or tribal organizations and communities, and with those students, parents, and staff who use the facility and shall incorporate the desires of the tribal and Indian entities consulted into their plans to the greatest extent feasible. Consultations conducted under this subparagraph shall be undertaken in conjunction with consultations required under section 1121(g).

§ 2011. Education personnel

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(f) WAIVER OF APPLICABILITY OF INDIAN PREFERENCE LAWS TO COVERED PERSONNEL ACTIONS; EXCEPTION; DEFINITIONS.—(1) Notwithstanding any provision of the Indian preference laws, such laws shall not apply in the case of any personnel action within the preview of this section respecting [an employee] *an applicant or employee* not entitled to Indian preference if each tribal organization concerned grants, in writing, a waiver of the application of such laws with respect to such personnel action, where such a waiver is in writing deemed to be a necessity by the tribal organization, except that this shall in no way relieve the Bureau of its responsibility to issue timely and adequate announcements and advertisements concerning any such personnel action if it is intended to fill vacancy (no matter how such vacancy is created).

(2) For purposes of this subsection, the term "tribal organization" means—

(A) the recognized governing body of any Indian tribe, band, nation, pueblo, or other organized community, including a Native village (as defined in section 1602(c) of Title 43); or

(B) in connection with any personnel action referred to in this subsection, any local school board as defined in section 2019 of this title, and which has been delegated by such governing body the authority to grant a waiver under such subsection with respect to such personnel action.

(3) The term "Indian preference laws" means section 472 of this title or any other provision of law granting a preference to Indians in promotions and other personnel actions, except that such term shall not be considered to include section 450e(b) of this title.

(h) RATES AND BASIC COMPENSATION OR ANNUAL SALARY FOR EDUCATORS AND EDUCATION POSITIONS; COST-OF-LIVING ALLOWANCE FOR EDUCATORS EMPLOYED IN EDUCATION POSITION IN ALASKA POSTDIFFERENTIAL PAY.—(1) The Secretary shall fix the basic compensation or annual salary rate for educators and education positions at rates [comparable to the rates] *comparable to the rates for comparably qualified individuals holding comparable positions in public schools serving comparable students in comparable areas (with adjustments for any housing and utility or other significant fringe benefits), but such rates shall not be less than the rates* in effect under the General Schedule for individuals with comparable qualifications, and holding comparable positions, to whom chapter 51 of Title 5 is applicable.

(2) Each educator employed in an education position in Alaska shall be paid a cost-of-living allowance equal to 25 per centum of the rate of basic compensation to which such educator is entitled.

(3) [The Secretary] *(A) The Secretary* may pay a postdifferential not to exceed 25 per centum of the rate of basic compensation, on the basis of conditions of environment or work which warrant additional pay as a recruitment and retention incentive.

(B)(i) Upon the request of the local school board of a Bureau school, the Secretary shall grant the supervisor of the school authorization to provide one or more post differentials under subparagraph (A) unless the Secretary determines for clear and convincing reasons (and advises the board in writing of those reasons) that certain of the requested post differentials should be disapproved or decreased because there is no disparity of compensation for the involved employees or positions in the Bureau school that is either—

(I) at least 5 percent, or

(II) less than 5 percent and affects the recruitment or retention of employees at the school. The request of a local school board under this subparagraph shall be deemed granted as requested at the end of the 60th day after the request is received in the Central Office of the Bureau unless before that time it is approved, approved with modification, or disapproved by the Secretary.

(ii) The Secretary or the supervisor of a Bureau school may discontinue or decrease a post differential authorized by reason of this subparagraph at the beginning of a school year after either—

(I) the local school board requests that it be discontinued or decreased, or

(II) the Secretary or the supervisor determines for clear and convincing reasons (and advises the board in writing of those reasons) that there is no disparity of compensation that would affect the recruitment or retention of employees at the school after the differential is discontinued or decreased.

(iii) On or before February 1 of each year, the Secretary shall submit to Congress a report describing the requests and grants of authority under this subparagraph during the previous fiscal year and listing the positions contracted under the grants of authority.

* * * * * * *

(n) DEFINITIONS.—For the purpose of this section—

(1) The term "education position" means a position in the Bureau the duties and responsibilties of which—

(A) are performed on a school-year basis principally in a Bureau school and involve—

(i) classroom or other instruction or the supervision or direction of classroom or other instruction;

(ii) any activity (other than teaching) which requires academic credits in educational theory and practice equal to the academic credits in educational theory and practice required for a bachelor's degree in education from an accredited institution of higher education; [or]

(iii) any activity in or related to the field of education notwithstanding that academic credits in educational theory and practice are not a formal requirement for the conduct of such activity; or

(iv) support services at, or associated with, the site of the school; or

(B) are performed at the agency level of the Bureau and involve the implementation of education-related programs other than the position of agency superintendent for education.

(2) The term "educator" means an individual whose services are required, or who is employed, in an education position.

§ 2019. Definitions

For the purpose of this chapter—

(1) the term "agency school board" means a body, the members of which are appointed by the school boards of the schools located within such agency, and the number of such members shall be determined by the Secretary in consultation with the affected tribes, except that, in agencies serving a single school, the school board of such school shall fulfill these duties;

(2) the term "Bureau" means the Bureau of Indian Affairs of the Department of the Interior;

[(3) Omitted]

(3) the term "Bureau funded school" means—

(A) a Bureau school;

(B) a contract school; or

(C) a school for which assistance is provided under the Indian Schools Operations Agreements Act of 1987;

(4) the term "Bureau school" means a Bureau operated elementary or secondary day or boarding school or a Bureau operated dormitory for students attending a school other than a Bureau school;

(5) the term "contract school" means an elementary or secondary school or a dormitory which receives financial assistance for its operation under a contract or agreement with the Bureau under section 102, 104(1), or 208 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f, 450h(1), and 458d);

[(4)]*(6)* he term "financial plan" means a plan of services to be provided by each Bureau school;

[(5)]*(7)* he term "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by a federally recognized Indian tribe or tribes, or a majority of whose members are members of federally recognized Indian tribes;

[(6)]*(8)* the term "local educational agency" means a board of education or other legally constituted local school authority having administrative control and direction of free public education in a county, township, independent, or other school district located within a State, and includes any State agency which directly operates and maintains facilities for providing free public education;

[(7)]*(9)* the term "local school board", when used with respect to a Bureau school, means a body chosen in accordance with the laws of the tribe to be served or, in the absence of such laws, elected by the parents of the Indian children attending the school, except that in schools serving a substantial number of students from different tribes, the members shall be appointed by the governing bodies of the tribes affected; and the number of such members shall be determined by the Secretary in consultation with the affected tribes;

[(8)]*(10)* the term "Secretary" means the Secretary of the Interior;

[(9)]*(11)* the term "supervisor" means the individual in the position of ultimate authority at a Bureau school; and

[(10)]*(12)* the term "tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C.A. § 1601 et seq.] which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

[TITLE III—FINANCIAL ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES FOR THE EDUCATION OF INDIAN CHILDREN

SHORT TITLE

[SEC. 301. This title may be cited as the "Indian Elementary and Secondary School Assistance Act".]

DECLARATION OF POLICY

[SEC. 302. (a) In recognition of the special educational and culturally related academic needs of Indian students in the United States, Congress hereby declares it to be the policy of the United States to provide financial assistance to local educational agencies to develop and carry out elementary and secondary school programs specially designed to meet these special educational and culturally related academic needs, or both.

[(b) The Secretary shall, in order to effectuate the policy set forth in subsection (a), carry out a program of making grants to local educational agencies which are entitled to payments under this title and which have submitted, and had approved applications therefor, in accordance with the provisions of this title.]

GRANTS TO LOCAL EDUCATIONAL AGENCIES

[SEC. 303.[1] (a)(1) For any fiscal year for which appropriations are authorized under section 307 of this Act, the Secretary shall determine the number of Indian children who were enrolled in the schools of a local educational agency, and for whom such agency provided free public education, during such fiscal year.

[(2)(A) From the sums appropriated under section 307(a) for any fiscal year the Secretary shall allocate to each local educational agency which has an application approved under this title an amount which bears the same ratio to such sums as the product of (i) the number of eligible Indian children (as determined under paragraph (1)), multiplied by (ii) the average per pupil expenditure per agency (as determined under subparagraph (c)), bears to the sum of such products for all such local educational agencies.

[(B) A local educational agency shall not be entitled to receive a grant under this title for any fiscal year unless the number of children under this subsection, with respect to such agency, is at least ten or constitutes at least 50 per centum of its total enrollment. The requirements of this subparagraph shall not apply to any such agencies serving Indian children in Alaska, California, and Oklahoma or located on, or in proximity to, an Indian reservation.

[(C) For the purposes of this subsection, the average per pupil expenditure for a local educational agency shall be the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the computation is made, of all of the local educational agencies in the State in which such agency is located, plus any direct current expenditures by such State for the operation of such agencies (without regard to the sources of funds from which either of such expenditures are made), divided by the aggregate number of children who were in average daily enrollment for

whom such agencies provided free public education during such preceding fiscal year.

[(b)(1) In addition to the sums appropriated for any fiscal year for grants to local educational agencies under this title, there is hereby authorized to be appropriated for any fiscal year an amount not in excess of 10 per centum of the amount appropriated for payments on the basis of entitlements computed under subsection (a) for that fiscal year, for the purpose of enabling the Secretary to provide financial assistance in accordance with the provisions of this title to schools which—

[(A) are located on or near reservations; and

[(B)(i) are not local educational agencies; or

[(ii) have not been local educational agencies for more than three years.

[(2) The requirements of clause (A) of paragraph (1) shall not apply to any school serving Indian Children in California, Oklahoma or Alaska.

[(c) In addition to the sums appropriated for any fiscal year for grants to local educational agencies under this title, there is hereby authorized to be appropriated for any fiscal year an amount not in excess of 10 per centum of the amount appropriated for payments on the basis of entitlements computed under subsection (a) for that fiscal year, for the purpose of enabling the Secretary to make grants on a competitive basis to local educational agencies to support demonstration projects and programs which are designed to plan for and improve education opportunities for Indian children, except that the Secretary shall reserve a portion not to exceed 25 per centum of such funds to make grants for demonstration projects examining the special educational and culturally related academic needs that arise in school districts with high concentrations of Indian children.]

USES OF FEDERAL FUNDS

[SEC. 304. Grants under this title may be used, in accordance with applications approved under section 305, for—

[(1) planning for and taking other steps leading to the development of programs specifically designed to meet the special educational or culturally related academic needs, or both, of Indian children, including pilot projects designed to test the effectiveness of plans so developed;

[(2) the establishment, maintenance, and operation of programs, including, in accordance with special regulations of the Secretary, minor remodeling of classroom or other space used for such programs and acquisition of necessary equipment, specially designed to meet the special educational or culturally related academic needs, or both, of Indian children; and

[(3) the training of counselors at schools eligible for funding under this title in counseling techniques relevant to the treatment of alcohol and substance abuse.]

APPLICATIONS FOR GRANTS; CONDITIONS FOR APPROVAL

[SEC. 305. (a) A grant under this title, except as provided in section 303(b), may be made only to a local educational agency or

agencies, and only upon application to the Secretary at such time or times, in such manner, and containing or accompanied by such information as the Secretary deems necessary. Such application shall—

[(1) provide that the activities and services for which assistance under this title is sought will be administrered by or under the supervision of the applicant;

[(2) set forth a program for carrying out the purposes of section 304, and provide for such methods of administration as are necessary for the proper and efficient operation of the program;

[(3) in the case of an application for payments for planning, provide that (A) the planning was or will be directly related to programs or project to be carried out under this title and has resulted, or is reasonably likely to result, in a program or project which will be carried out under this title, and (B) the planning funds are needed because of the innovative nature of the program or project or because the local educational agency lacks the resources necessary to plan adequately for programs and projects to be carried out under this title;

[(4) provide that effective procedures, including provisions for appropriate objective measurement of educational achievement will be adopted for evaluating at least annually the effectiveness of the programs and projects in meeting the special educational needs of Indian students;

[(5) set forth policies and procedures which assure that Federal funds made available under this title for any fiscal year will be so used as to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available by the applicant for the education of Indian children and in no case supplant such funds;

[(6) provide for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid to the applicant under this title; and

[(7) provide for making an annual report and such other reports, in such form and containing such information, as the Secretary may reasonably require to carry out his functions under this title and to determine the extent to which funds provided under this title have been effective in improving the educational opportunities of Indian students in the area served, and for keeping such record and for affording such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports.

[(b) An application by a local educational agency or agencies for a grant under this title may be approved only if it is consistent with the applicable provisions of this title and—

[(1) meets the requirements set forth in subsection (a);

[(2) provides that the program or project for which application is made—

[(A) will utilize the best available talents and resources (including persons from the Indian community) and will substantially increase the educational opportunities of

Indian children in the area to be served by the applicant; and

[(B) has been developed—

[(i) in open consultation with parents of Indian children, (including persons acting in loco parentis other than school administrators of officials) teachers, and, where applicable secondary school students, including public hearings at which such persons have had a full opportunity to understand the program for which assistance is being sought and to offer recommendations thereon, and

[(ii) with the participation and written approval of a committee composed of, and selected by, parents of children participating (including persons acting in loco parentis other than school administrators or officials) in the program for which assistance is sought teachers, and, where applicable, secondary school students of which at least half the members shall be such parents;

[(C) sets for such policies and procedures, including policies and procedures relating to the hiring of personnel, as will insure that the program for which assistance is sought will be operated and evaluated in consultation with, and the involvement of parents of the children and representatives of the area to be served, including the committee established for the purposes of clause (2)(B)(ii);

[(3) provides that the parent committee formed pursuant to paragraph (2)(B)(ii) will adopt and abide by reasonable by-laws for the conduct of the program for which assistance is sought.

[(c) Amendments of applications shall, except as the Secretary may othewise provide by or pursuant to regulations, be subject to approval in the same manner as original applications.]

PAYMENTS

[SEC. 306. (a) The Secretary shall, subject to the provisions of section 307, from time to time pay to each local educational agency which has had an application approved under section 305, an amount equal to the amount estimated to be expended by such agency in carrying our activities under such application.

[(b)(1) No paymens shall be made under this title for any fiscal year to any local educational agency in a State which had taken into consideration payments under this title in determining the eligibility of such local educational agency in that State for State aid, or the amount of that aid, with respect to the free public education of children during that year or the proceding fiscal year.

[(2) No payments shall be made under this title to any local educational agency for any fiscal year unless the State educational agency finds that the combined fiscal effort (as determined in accordance with regulations of the Secretary) of that agency and the State with respect to the provision of free public education by that agency for the proceding fiscal year was not less than such combined fiscal effort for that purpose for the second preceding fiscal year.]

AUTHORIZATION OF APPROPRIATIONS; ADJUSTMENTS

[SEC. 307. (a) For the purpose of making payments under this title, there are authorized to be appropriated (1) for each of the fiscal years ending prior to October 1, 1986, such sums as may be necessary, and (2) for each of the fiscal years 1987, 1988, and 1989, an amount not to exceed the amount appropriated for such purpose for fiscal year 1986.

[(b) The Secretary may reallocate, in such manner as will best assist in advancing the purposes of this title, any amount which the Secretary determines, based upon estimates made by local educational agencies, will not be needed by any such agency to carry out its approved project.]

ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

TITLE X—GENERAL PROVISIONS

IMPROVEMENT OF EDUCATIONAL OPPORTUNITIES FOR INDIAN STUDENTS

[SEC. 1005. (a) The Commissioner shall carry out a program of making grants for the improvement of educational opportunities for Indian children—

[(1) to support planning, pilot, and demonstration projects, in accordance with subsection (b), which are designed to test and demonstrate the effectiveness of programs for improving educational opportunities for Indian children;

[(2) to assist in the establishment and operation of programs, in accordance with subsection (c), which are designed to stimulate (A) the provision of educational services not available to Indian children in sufficient quantity or quality, and (B) the development and establishment of exemplary educational programs to serve as models for regular school programs in which Indian children are educated;

[(3) to assist in the establishment and operation of preservice and inservice training programs, in accordance with subsection (d), for persons serving Indian children as educational personnel; and

[(4) to encourage the dissemination of information and materials relating to, and the evaluation of the effectiveness of, education programs which may offer educational opportunities to Indian children.

In the case of activities of the type described in clause (3) preference shall be given to the training of Indians.

[(b) The Commissioner is authorized to make grants to State and local educational agencies, federally supported elementary and secondary schools for Indian children and to Indian tribes, Indian organizations, and Indian institutions to support planning, pilot, and demonstration projects which are designed to plan for, test and demonstrate the effectiveness of, programs for improving educational opportunities for Indian children, including—

[(1) innovative programs related to the educational needs of educationally deprived children;

[(2) bilingual and bicultural education programs and projects;

[(3) special health and nutrition services, and other related activities which meet the special health, social, and psychological problems of Indian children; and

[(4) coordinating the operation of other federally assisted programs which may be used to assist in meeting the needs of such children.

[(c) The Commissioner is also authorized to make grants to State and local educational agencies and to tribal and other Indian community organizations to assist and stimulate them in developing and establishing educational services and programs specifically designed to improve educational opportunities for Indian children. Grants may be used—

[(1) to provide educational services not available to such children in sufficient quantity or quality, including—

[(A) remedial and compensatory instruction, school health, physical education, psychological, and other services designed to assist and encourage Indian children to enter, remain in, or reenter elementary or secondary school;

[(B) comprehensive academic and vocational instruction;

[(C) instructional materials (such as library books, textbooks, and other printed or published or audiovisual materials) equipment;

[(D) comprehensive guidance, counseling, and testing services;

[(E) special education programs for handicapped and gifted and talented Indian children;

[(F) early childhood programs, including kindergarten;

[(G) bilingual and bicultural education programs; and

[(H) other services which meet the purposes of this subsection; and

[(2) for the establishment and operation of exemplary and innovative educational programs and centers, involving new educational approaches, methods, and techniques designed to enrich programs of elementary and secondary education for Indian children.

[(d) The Commissioner is also authorized to make grants to institutions of higher education and to State and local educational agencies, in combination with institutions of higher education, for carrying out programs and projects—

[(1) to prepare persons to serve Indian students as teachers, administrators, teacher aides, social workers, and ancillary educational personnel; and

[(2) to improve the qualifications of such persons who are serving Indian students in such capacities.

Grants for the purposes of this subsection may be used for the establishment of fellowship programs leading to an advanced degree, for institutes and, as part of a continuing program, for seminars, symposia, workshops, and conferences. In carrying out the programs authorized by this subsection, preference shall be given to the training of Indians.

[(e)(1) The Commissioner is also authorized to make grants to and contracts with public agencies, State educational agencies in

States in which more than five thousand Indian children are enrolled in public elementary and secondary schools, Indian tribes, Indian institutions, Indian organizations, or to make contracts with private institutions and organizations, to establish, on a regional basis, information centers to—

[(A) evaluate programs assisted under this part, under the Indian Elementary and Secondary School Assistance Act, under section 314 of the Adult Education Act, and other Indian education programs in order to determine their effectiveness in meeting the special educational and culturally related academic needs of Indian children and to conduct research to determine those needs;

[(B) provide technical assistance upon request to local educational agencies and Indian tribes, Indian organizations, Indian institutions, and parent committees created pursuant to section 305(b)(2)(B)(ii) of the Indian Elementary and Secondary School Assistance Act in evaluating and carrying out programs assisted under this part, under such Act, and under section 314 of the Adult Education Act through the provision of materials and personnel resources; and

[(C) disseminate information upon request to the parties described in subparagraph (B) concerning all Federal education programs which affect the education of Indian children including information on successful models and programs designed to meet the special educational needs of Indian children.

[(2) Grants or contracts made pursuant to this subsection may be made for a term not to exceed three years (renewable at the end of that period subject to the approval of the Commissioner) provided that provision is made to insure annual review of the projects.

[(3) From the funds appropriated pursuant to subsection (g)(1) of this section, the Commissioner is also authorized to make grants to and contracts with Indian tribes, Indian institutions, and Indian organizations, and public agencies and institutions for—

[(A) the national dissemination of information concerning education programs, services, and resources available to Indian children, including evaluations thereof; and

[(B) the evaluation of the effectiveness of federally assisted programs in which Indian children may participate in achieving the purposes of such programs with respect to such children.

[(f)(1) Applications for a grant under this section shall be submitted at such time, in such manner, and shall contain such information, and shall be consistent with such criteria, as may be established as requirements in regulations promulgated by the Commissioner. Such applications shall—

[(A) set forth a statement describing the activities for which assistance is sought;

[(B) in the case of an application for the purposes of subsection (c), subject to such criteria as the Commissioner shall prescribe, provide for the use of funds available under this section, and for the coordination of other resources available to the applicant, in order to insure that, within the scope of the purpose of the project, there will be a comprehensive program to achieve the purposes of this section;

[(C) in the case of an application for the purposes of subsection (c), make adequate provision for the training of the personnel participating in the project; and

[(D) provide for an evaluation of the effectiveness of the project in achieving its purpose and those of this section.

The Commissioner shall not approve an application for a grant under subsection (b) or (c) unless he is satisfied that such application, and any documents submitted with respect thereto, show that there has been adequate participation by the parents of the children to be served and tribal communities in the planning and development of the project, and that there will be such a participation in the operation and evaluation of the project. The Commissioner shall not approve an application for a grant under subsection (b), (c), (d) unless he is satisfied that such an application, to the extent consistent with the number of eligible children in the area to be served who are enrolled in private nonprofit elementary and secondary schools whose needs are of the type which the program is intended to meet, makes provision for the participation of such children on an equitable basis. In approving applications under this section, the Commissioner shall give priority to applications from Indian educational agencies, organizations, and institutions.

[(2) The Commissioner shall not approve an application for a grant under subsection (e) of this section unless he is satisfied that the funds made available under that subsection will be so used as to supplement the level of funds from State, local, and other Federal sources that would, in the absence of Federal funds under this subsection, be made available by the State or local educational agency for the activities described in this subsection, and in no case will be used so as to supplant those funds.

[(g)(1) For the purpose of making grants under this section there are hereby authorized to be appropriated $25,000,000 for the fiscal year ending June 30, 1973, and $35,000,000 for each of the succeeding fiscal years ending prior to October 1, 1989.

[(2) For the purpose of making grants under subsection (e) of this section there are hereby authorized to be appropriated $8,000,000 for each of the fiscal years ending prior to October 1, 1989. The sum of the grants made to State educational agencies under subsection (e) of this section shall not exceed 15 per centum in any fiscal year of the sums appropriated for that year.

[(3) Notwithstanding paragraphs (1) and (2), the amount that is authorized to be appropriated to under this subsection for each of the fiscal years 1987, 1988, and 1989, is the amount appropriated for such purpose for fiscal year 1986.]

PART V—ADULT EDUCATION

ADULT EDUCATION ACT

TITLE III—ADULT EDUCATION

SHORT TITLE

SEC. 301. This title may be cited as the "Adult Education Act."

IMPROVEMENT OF EDUCATION OPPORTUNITIES FOR ADULT INDIANS

[SEC. 315. (a) The Secretary shall carry out a program of making grants to State and local educational agencies, and to Indian tribes, institutions, and organizations, to support planning, pilot, and demonstration projects which are designed to plan for, and test and demonstrate the effectiveness of, programs for providing adult education for Indians—

[(1) to support planning, pilot, and demonstration projects which are designed to test and demonstrate the effectiveness of programs for improving employment and educational opportunities for adult Indians;

[(2) to assist in the establishment and operation of programs which are designed to stimulate (A) the provision of basic literacy opportunities to all nonliterate Indian adults, and (B) the provision of opportunities to all Indian adults to qualify for a high school equivalency certificate in the shortest period of time feasible;

[(3) to support a major research and development program to develop more innovative and effective techniques for achieving the literacy and high school equivalency goals;

[(4) to provide for basic surveys and evaluation thereof to define accurately the extent of the problems of illiteracy and lack of high school completion among Indians;

[(5) to encourage the dissemination of information and materials relating to, and the evaluation of the effectiveness of, education programs which may offer educational opportunities to Indian adults.

[(b) The Secretary is also authorized to make grants to Indian tribes, Indian institutions, and Indian organizations to develop and established educational services and programs specifically designed to improve education opportunities for Indian adults.

[(c) The Secretary is also authorized to make grants to, and contracts with, public agencies, and institutions, and Indian tribes, institutions, and organizations for—

[(1) the dissemination of information conerning educational programs, serices, and resources available to Indian adults, including evaluation thereof; and

[(2) the evaluation of the effectiveness of federally assisted programs in which Indian adults may participate in achieving the purposes of such programs with respect to such adults.

[(d) Applications for a grant under this section shall be submitted at such time, in such manner, and contain such information, and shall be consistent with such criteria, as may be established as requirements in regulations promulgated by the Secretary. Such applications shall—

[(1) set forth a statement describing the activities for which assistance is sought;

[(2) provide for an evaluation of the effectiveness of the project in achieving its purposes and those of this section.

The Secretary shall not approve an application for a grant under subsection (a) unless he is satisfied that such application, and any documents submitted with respect thereto, indicate that there has been adequate participation by the individuals to be served and

tribal communities in the planning and development of the project, and that there will be such a participation in the operation and evaluation of the project. In approving applications under subsection (a), the Secretary shall give priority to applications from Indian educational agencies, organizations, and institutions.

[(e) For the purpose of making grants under this section there are hereby authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1973, and $8,000,000 for each of the succeeding fiscal years ending prior to October 1, 1986. There is authorized to be appropriated for such purpose for each of the fiscal years 1987, 1988, and 1989, an amount not to exceed the amount appropriated for such purpose for fiscal year 1986.]

PART III—INDIAN EDUCATION PROGRAMS

INDIAN EDUATION ACT

SHORT TITLE

[SEC. 401. This title may be cited as the "Indian Education Act".]

PART B—SPECIAL PROGRAMS AND PROJECTS TO IMPROVE EDUCATIONAL OPPORTUNITIES FOR INDIAN CHILDREN

AMENDMENTS TO TITLE X OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

[SEC. 421.

[(b)

[(2) For the purposes of title II and III of the Elementary and Secondary Education Act of 1965 and part B of title VI of Public Law 91-230, the Secretary of the Interior shall have the same duties and responsibilities with respect to funds paid to him under such titles, as he would have if the Department of the Interior were a State educational agency having responsibility for the administration of a State plan under such titles.]

SPECIAL EDUCATIONAL TRAINING PROGRAMS FOR TEACHERS OF INDIAN CHILDREN

[SEC. 422. (a) The Commissioner is authorized to make grants to and enter into contracts with institutions of higher education, Indian organization, and Indian tribes for the purpose of preparing individuals for teaching or administrating special programs and projects designed to meet the special educational needs of Indian people and to provide in-service training for persons teaching in such programs. Priority shall be given to Indian institutions and organizations. In carrying out his responsibilities under this section, the Commissioner is authorized to award fellowships and traineeships to individuals and to make grants to and to enter into contracts with institutions of higher education, Indian organizations, and Indian tribes for cost of education allowances. In awarding fellowships and traineeships under this section, the Commissioner shall give preference to Indians.

[(b) In the case of traineeships and fellowships, the Commissioner is authorized to grant stipends to, and allowances for dependents of, persons receiving traineeships and fellowships.

[(c) There is authorized to be appropriated $2,000,000 for the fiscal year ending June 30, 1975, and for each of the succeeding fiscal years ending prior to October 1, 1986 to carry out the provisions of this section, There is also authorized to be appropriated to carry out the provisions of this section for each of the fiscal years 1987, 1988, and 1989, an amount not to exceed the amount appropriated for such purpose for fiscal year 1986.]

FELLOWSHIPS FOR INDIAN STUDENTS

[SEC. 423. (a) During the fiscal year ending June 30, 1975, and each of the succeeding fiscal years ending prior to October 1, 1989 the Commissioner is authorized to award fellowships to be used for study in graduate and professional programs at institutions of higher education. Such fellowships shall be awarded to Indian students in order to enable them to pursue a course of study of not more than four, academic years leading toward a postbaccalaureate degree in medicine, clinical psychology, law, education, and related fields or leading to an undergraduate or graduate degree in engineering, business administration, natural resources, and related fields. The Commissioner may, if a fellowship is vacated prior to the end of the period for which it was awarded, award an additional fellowship for the remainder of such period.

[(b) The Commissioner shall pay to persons awarded fellowships under this subsection such stipends (including such allowances for subsistence of such persons and their dependents) as he may determine to be consistent with prevailing practices under comparable federally supported programs

[(c) The Commissioner shall pay to the institution of higher education at which the holder of a fellowship under the subsection is pursuing a course of study, in lieu of tuition charged such holder, such amounts as the Commissioner may determine to cover the cost of education for the holder of such a fellowship.

[(d) The amount that is authorized to be appropriated to carry out the provisions of this section for each of the fiscal years 1987, 1988, 1989, is the amount appropriated for such purpose for fiscal year 1986.

[(e) Not more than 10 percent of the fellowships awarded under subsection (a) shall be awarded, on a priority basis, to persons receiving training in guidance counseling with a specialty in the area of alcohol and substance abuse counseling and education.]

PART C—SPECIAL PROGRAMS RELATING TO ADULT EDUCATION FOR INDIANS

PART D—OFFICE OF INDIAN EDUCATION

OFFICE OF INDIAN EDUCATION

[SEC. 441. (a) There is hereby established, in the Office of Education, a bureau to be known as the "Office of Indian Education" which under the direction of the Commissioner, shall have the responsibility for administering the provisions of title III of the Act

of September 30, 1950 (Public Law 874, Eighty-first Congress), as added by this Act, section 810 of title VIII of the Elementary and Secondary Education Act of 1965, as added by this Act, and section 314 of title III of the Elementary and Secondary Education Amendments of 1966, as added by this Act. The Office shall be headed by a Deputy Commissioner of Indian Education, who shall be appointed by the Commissoner of Education from a list of nominees submitted to him by the National Advisory Council on Indian Education.

[(b) The Deputy Commissioner of Indian Education shall be compensated at the rate prescribed for, and shall be placed in, grade 18 of the General Schedule set forth in section 5332 of title 5, United States Code, and shall perform such duties as are delegated or as signed to him by the Commissioner. The position created by this subsection shall be in addition to the number of positions placed in grade 18 of such General Schedule under section 5108 of title 5, United States Code.]

NATIONAL ADVISORY COUNCIL ON INDIAN EDUCATION

[SEC. 442. (a) There is hereby establish the National Advisory Council on Indian Education (referred to in this title as the "National Council"), which shall consist of fifteen members who are Indians and Alaska Natives appointed by the President of the United States. Such appointments, shall be made by the President from lists of nominees furnished, from time to time, by Indian tribes and organizations, and shall represent diverse geographic areas of the country. Subject to section 448(b) of the General Education Provisions Act, the National Council shall continue to exist until October 1, 1989.

[(b) The National Council shall—

[(1) advise the Commissioner of Education with respect to the administration (including the development of regulations and of administrative practices and policies) of any program in which Indian children or adults participate from which they can benefit, including title III of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), as added by this Act, and section 810, title VIII of the Elementary and Secondary Education Act of 1965, as added by this Act and with respect to adequate funding thereof;

[(2) review applications for assistance under title III of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), as added by this Act, section 810 of title VIII of the Elementary and Secondary Education Act of 1965, as added by this Act, and section 314 of the Adult Education Act, as added by this Act, and make recommendations to the Commissioner with respect to their approval;

[(3) evaluate programs and projects carried out under any program of the Department of Health, Education, and Welfare in which Indian children or adults can participate or from which they can benefit, and disseminate the results of such evaluations;

[(4) provide technical assistance to local educational agencies and to Indian educational agencies, institutions, and orga-

nizations to assist them in improving the educational of Indian children;

[(5) assist the Commissioner in developing criteria and regulations for the administration and evaluation of grants made under section 303(b) of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress); and

[(6) to submit to the Congress not later than June 30 of each year a report of its activities, which shall include any recomendations it may deem necessary for the improvement of Federal education programs in which Indian children and adults participate, or from which they can benefit, which report shall include statement of the National Council's recommendations to the Commissioner with respect to the funding of any such programs.

[(c) With respect to functions of the National Council stated in clauses (2), (3), and (4) of subsection (b), the National Council is authorized to contract with any public or private nonprofit agency, institution, or organization for assistance in carrying our such functions.

[(d) From the sums appropriated pursuant to section 400(d) of the General Education Provisions Act which are available for the purposes of section 411 of such Act and for part D of such Act, the Commissioner shall make available such sums as may be necessary to enable the National Council to carry out its functions under this section.]

Part E—Miscellaneous Provisions

AMENDMENT TO TITLE V OF HIGHER EDUCATION ACT OF 1965

DEFINITION

[Sec. 453. (a) For the purposes of this title, the term "Indian" means any individual who (1) is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized by the State in which they reside, or who is a descendant, in the first or second degree, of any such member, or (2) is considered by the Secretary of the Interior to be an Indian for any purpose, or (3) is an Eskimo or Aleut or other Alaska Native, or (4) is determined to be an Indian under regulations promulgated by the Commissioner, after consultation with the National Advisory Council on Indian Education, which regulations shall futher define the term "Indian".

[(b) The Assistant Secretary of Health, Education, and Welfare for Education in consultation with Indian tribes, national Indian organizations, and the Secretary of the Interior, shall supervise a thorough study and analysis of the definition of Indian contained in subsection (a) and submit a report on the results of such study and analysis to the Congress not later than January 1, 1980. Such study and analysis shall include but not be limited to—

[(1) an indentification of the total number of Indian children being served under this title;

[(2) an identification of the number of Indiam children eligible and served under each of the four clauses of such definition in such subsection;

[(3) an evaluation of the consequences of eliminating descedants in the second degree from the terms of such definition, or of specifying a final date by which tribes, bands, and groups must be recognized, or of both;

[(4) other options for changes in the terms of such definition and an evaluation of the consequences of such changes, together with supporting data;

[(5) recommendations with respect to criteria for use by the Commissioner under the rulemaking authority contained in clause (4) of such subsection.

[(c) On the form establishisng a child's eligibility form:

[(1) the name of the tribe, band, or other organized group of Indians with which the applicant claims membership, along with the enrollment number establishing membership (where applicable), and the name and address of the organization which has updated and accurate membership data for such tribe, band, or other organized group of Indians, or, if the child is not a member of a tribe, bank, or other organized group of Indians, the student eligibility form shall bear the name, the enrollment number (where applicable) and the organization (and address thereof) responsible for maintaining updated and accurate membership, membership roles of any of the applicant's parents or grandparents, from whom, the applicant claims eligibility;

[(2) whether the tribe, band, or other organized group of Indians with which the applicant, his parents, or grandparents claim membership are federally recognized;

[(3) the name and address of the parent or legal guardian;

[(4) the signature of the parent or legal guardian verifying the accuracy of the information supplied; and

[(5) any other information which the Secretary deems necessary to provide an accurate program profile.

Nothing in the requirements of paragraphs (1) through (5) of this subsection shall be construed as changing or restricting the applicable eligibility definition set forth in subsection (a) of this section.]

EDUCATION AMENDMENTS OF 1978

TITLE XI—INDIAN EDUCATION

PART C—INDIAN EDUCATION PROVISIONS

* * * * * * *

TRIBAL SCHOOLS

[SEC. 1146. Notwithstanding any other provision of law, any Indian tribe or organization which is controlled or sanctioned by an Indian tribal government and which operates any school for the children of that tribe shall be deemed to be a local educational agency for purposes of section 303(a) of the Indian Elementary and Secondary School Assistance Act if each such school, as determined by the Commissioner, operated by that tribe or organization provides its students and educational program which meets the stand-

ards established under section 1121 for the basic education of Indian children, or is a school operated under contract by that tribe or organization in accordance with the provisions of the Indian Self-Determination and Education Assistance Act.]

. . . . . .

PROGRAM MONITORING

[SEC. 1149. (a) The Commissioner shall establish a method of auditing on an annual basis a sample of not less than one-third of the total number of school districts receiving funds under part A of the Indian Education Act, and shall report to the Congress his findings.

[(b) Any falsification of information provided on the local educational agency application for funds under part A of such Act is punishable by impoundment of unused funds and an ineligibility for receiving any future entitlement under such Act.

[(c) Any falsification of information provided on the student eligibility form for funds under part A of such Act is punishable by making that individual ineligible for receiving any future entitlement under the Act.]

§ 640a. Navajo Community College; purpose

It is the purpose of sections 640a to 640c–2 of this title to assist the Navajo Tribe of Indians in providing education to the members of the tribe and other qualified applicants through a community college, established by that tribe, known as the Navajo Community College.

§ 640b. Grants

The Secretary of Interior is authorized to make grants to the Navajo Tribe of Indians to assist the tribe in the construction, maintenance, and operation of the Navajo Community College. Such college shall be designed and operated by the Navajo Tribe to insure that the Navajo Indians and other qualified applicants have educational opportunities which are suited to their unique needs and interests.

§ 640c. Study of facilities needs

(a) The Secretary shall conduct a detailed survey and study of the academic facilities needs of the Navajo Community College, and shall report to the Congress not later than August 1, 1979, the results of such survey and study. Such report shall include any recommendations or views submitted by the governing body of such College and by the governing body of the Navajo tribe, and shall include detailed recommendations by the Secretary as to the number, type, and cost of academic facilities which are required ranking each such required facility by relative need.

(b) Funds to carry out the purposes of this section may be drawn from general administrative appropriations to the Secretary made after October 17, 1978.

§ 640c–1. Authorization of appropriations

(a)(1) For the purpose of making construction grants under sections 640a to 640c–2 of this title, there are hereby authorized to be

appropriated such sums as may be necessary for each of the fiscal years 1987, 1988, and 1990.

(2) Sums appropriated pursuant to this subsection for construction shall, unless otherwise provided in appropriation Acts, remain available until expended.

(b)[(1) There is further authorized to be appropriated for grants to the Navajo Community College, for each fiscal year beginning on or after October 1, 1979, an amount equal to the amount necessary for operation and maintaince of the college, including, but not limited to, administrative, academic, and operations and maintenance costs.] *(1) There are authorized to be appropriated for grants to the Navajo Community College, for each fiscal year, an amount necessary to pay expenses incurred for—*

(A) the maintenance and operation of the college, including—

(i) basic, special, developmental, vocational, technical, and special handicapped education costs,

(ii) annual capital expenditures, including equipment needs, minor capital improvements and remodeling projects, physical plant maintenances and operation costs, and exceptions and supplemental need account, and

(iii) summer and special interest programs,

(B) major capital improvements, including internal capital outlay funds and capital improvement projects,

(C) mandatory payments, including payments due on bonds, loans, notes, or lease purchases, and

(D) supplemental student services, including student housing, food service, and the provision of access to books and services.

(2) The Secretary shall make payments, pursuant to grants under this subsection, in advance installments of not less than 40 per centum of the funds available for allotment, based on anticipated or actual numbers of fulltime equivalent Indian students or such other factors as determined by the Secretary. Adjustments for overpayments and underpayments shall be applied to the remainder of such funds and such remainder shall be delivered no later than July 1 of each year.

(c) The Secretary of the Interior is authorized and directed to establish by rule procedures to insure that all funds appropriated under sections 640a to 640c–2 of this title are properly identified for grants to the Navajo Community College and that such funds are not commingled with appropriations historically expended by the funds are not commingled with appropriations historically expended by the Bureau of Indian Affairs for programs and projects normally provided on the Navajo Reservation for Navajo beneficiaries.

§ 640c–2. Effect on other laws

Except as specifically provided by law, eligibility for assistance under sections 640a to 640c–2 of this title shall not, by itself, preclude the eligibility of the Navajo Community College to receive Federal financial assistance under any program authorized under the Higher Education Act of 1965 [20 U.S.C.A. § 1001 et seq.] or any other applicable program for the benefit of institutions of higher education, community colleges, or postsecondary educational institutions.

PAYMENTS; INTEREST

SEC. 7. (a) Notwithstanding any other provision of law, the Secretary of the Interior shall not, in disbursing funds provided under this Act, use any method of payment which was not used during fiscal year 1987 in the disbursement of funds provided under this Act.

(b)(1) Notwithstanding any other provision of law, any interest or investment income that accrues on any funds provided under this Act after such funds are paid to the Navajo Community College and before such funds are expended for the purpose for which such funds were provided under this Act shall be the property of the Navajo Community Colletge and shall not be taken into account by any officer or employee of the Federal Governemnt in termining whether to provide assistance, or the amount of assistance, to the Navajo Community College under any provision of Federal law.

(2) Funds provided under this Act may only be invested by the Navajo Community College in obligations of the United States or in obligations or securities that are guaranteed or insured by the United States.

CHAPTER 20—TRIBALLY CONTROLLED COMMUNITY COLLEGE ASSISTANCE

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§ 1808. Amount of grants

(a) FORMULA.—Except as provided in section 1811 of this title, the Secretary shall, subject to appropriations, grant for each academic year to each tribally controlled community college having an application approved by him an amount equal to the product of—

(1) the Indian student count at such college during such academic year, as determined by the Secretary in accordance with section 1801(a)(7) of this title; and

(2) $5,820.

except that no grant shall exceed the total cost of the education program provided by such college.

(b) ADVANCE INSTALLMENT PAYMENTS; ADJUSTMENTS.—[The Secretary] *(1) The Secretary* shall make payments, pursuant to grants under this subchapter, in advance installments of not less than 40 per centum of the funds available for allotment, based on anticipated or actual numbers of full-time equivalent Indian students or such other factors as determined by the Secretary. Adjustments for overpayments and underpayments shall be applied to the remainder of such funds and such remainder shall be delivered no later than July 1 of each year.

(2) Notwithstanding any other provision of law, the Secretary shall not, in disbursing funds provided under this title, use any method of payment which was not used during fiscal year 1987 in the disbursement of funds provided under this title.

(3) Notwithstanding any other provision of law, any interest or investment income that accrues on any funds provided under this title after such funds are paid to the tribally controlled community college and before such funds are expended for the purpose for which

such funds were provided under this title shall be the property of the tribally controlled community college and shall not be taken into account by any officer or employee of the Federal Government in determining whether to provide assistance, or the amount of assistance, to the tribally controlled community college under any provision of Federal law.

(4) Funds provided under this title may only be invested by the tribally controlled community college in obligations of the United States or in obligations or securities that are guaranteed or insured by the United States.

(c) ACCOUNTING BY RECIPIENT INSTITUTION; DATA COLLECTION SYSTEM; REPORT TO CONGRESS.—(1) Each institution receiving payments under this subchapter shall annually provide to the Secretary an accurate and detailed accounting of its operating and maintenance expenses and such other information concerning costs as the Secretary may request.

(2) The Secretary shall, in consultation with the National Center for Education Statistics, establish a data collection system for the purpose of obtaining accurate information with respect to the needs and costs of operation and maintenance of tribally controlled community colleges.

§ 1809. Effect on other programs

(a) ELIGIBILITY FOR ASSISTANCE.—Except as specifically provided in this subchapter, eligibility for assistance under this subchapter shall not, by itself, preclude the eligibility of any tribally controlled college to receive Federal financial assistance under any program authorized under the Higher Education Act of 1965 [20 U.S.C.A. § 1001 et seq.] or any other applicable program for the benefit of institutions of higher education, community colleges, or postsecondary educational institutions.

(b) ALLOCATIONS FROM BUREAU OF INDIAN AFFAIRS.—(1) The amount of any grant for which tribally controlled community colleges are eligible under section 1808 of this title shall not be altered because of funds allocated to any such colleges from funds appropriated under the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13).

(2) No tribally controlled community college shall be denied funds appropriated under such Act of November 2, 1921, because of the funds it receives under this chapter.

(3) No tribally community college for which a tribe has designated a portion of the funds appropriated for the tribe from funds appropriated under the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13) may be denied a contract for such portion under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) (except as provided in that Act), or denied appropriate contract support to administer such portion of the appropriated funds.

(c) ASSISTANCE DEEMED AS BASIC EDUCATIONAL OPPORTUNITY GRANT.—For the purposes of sections 312(2)(A)(i) and 322(a)(2)(A)(i) of the Higher Education Act of 1965 [20 U.S.C.A. §§ 1058(2)(A)(i), 1061(a)(2)(A)(i)], any Indian student who receives a student assistance grant from the Bureau of Indian Affairs for postsecondary

education shall be deemed to have received such assistance under subpart 1 of part A of title IV of such Act [20 U.S.C.A. § 1070a].

(d) Notwithstanding any other provision of law, funds provided under this title to the tribally controlled community college may be treated as non-Federal, private funds of the college for purposes of any provision of Federal law which requires that non-Federal or private funds of the college be used in a project or for a specific purpose.

(b) Section 6 of the Navajo Community College Act is amended—

(1) by striking out "Except" and inserting in lieu thereof "(a) Except", and

(2) by adding at the end thereof the following new subsection:

(b) Notwithstanding any other provision of law, funds provided under this Act to the Navajo Community College may be treated as non-Federal, private funds of the College for purposes of any provision of Federal law which requires that non-Federal or private funds of the College be used in a project or for a specific purpose.

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